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Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

SAMUEL K. JACOBS, *and* NANCY HECKERMAN,

Petitioners,

v.

SUSAN WU, et al,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR A WRIT OF CERTIORARI

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183 pp

QUESTIONS PRESENTED

This Writ of Certiorari has been filed to determine if the lower courts have violated their constitutional duties by failing to enforce the enactments of Congress which have caused the denial of due process of law, equal protection of the laws, and trial by jury for a complaint on treason.

1. Has hindering, preventing, or delaying the enforcement and the execution of the enactments of Congress through the "force" of the lower courts caused the denial of the Petitioners' Constitutional rights of due process of the law pursuant to Amendment V and Amendment XIV and equal protection of the laws pursuant to Amendment XIV ?

2. Have the lower courts the right to deny a trial by jury for any reason when the complaint is under Treason against the United States *"on the Testimony of two Witnesses"* pursuant to Article III, Section 3; Amendment VII; and Article VI ?

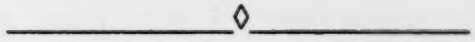
3. Have the Officers of the Executive branch failed to *"take Care that the Laws be faithfully executed,"* for crimes against the United States pursuant to Section 3 of Article III?

4. Have the United States Court of Appeals for the District of Columbia taken an action to prevent, hinder, and delay the enactment of Title 28 U.S.C.A. § 1291 that is in conflict with the interpretation of the Supreme Court of the United

States and the other Circuits in order to deny a jury trial on a complaint for the averments of treason?

5. Has the United States District Court for the District of Columbia the right, and the immunity, to commit a criminal act by forming a conspiracy through orders of the Court, and how can this irreparable injury to the Petitioners be rectified since the lower courts have joined two separate complaints ?

6. What is the real reason the lower courts denied this jury trial on treason?



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Samuel K. Jacobs, et al, v. Susan Wu, et al,
Case No. 00-231 (Dist. of Col. Cir., 2000)

Samuel K. Jacobs, et al, v. Susan Wu., et al,
Case No. 01-7007 (Dist. of Col. Apps., 2001)

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JURISDICTION

An opinion of the District Court in the District of Columbia was issued on December 5, 2000, and appears in the Appendix hereto. The opinion of the Court of Appeals was entered on April 9, 2001. A timely petition for rehearing and rehearing en banc was denied on June 21, 2001, and this petition was timely filed within 90 days as permitted by Rule 13(3).

This Court's jurisdiction is invoked under Title 28 U.S.C.A. § 1254 (1), which provides that cases in the courts of appeals may be reviewed by the Supreme Court of the United States Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

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CONSTITUTIONAL PROVISIONS

Article II, Section 3
Article III, Section 3

Article IV, Section 1
Article IV, Section 2
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Amendment V
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Amendment XIV, Section 1

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STATUTORY PROVISIONS

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§ 793
§ 794
§ 798
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§ 2384
§ 2386
United States Code, Title 28:
§ 144
§ 372
§ 455
§ 1291
§ 1343
§ 2403
Title 42 U.S.C.A. § 1985

Other Authorities:

Federal Rules of Civil Procedure
Rule 38
Rule 60 (b)
Federal Rules of Appellate Procedure
Rule 4(a)
Rule 44
United States District Court for the District of Columbia:
Local Rule 40.5

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STATEMENT OF THE CASE

The Petitioners are Samuel K. Jacobs and Nancy Heckerman. The Respondents are Gung Sou Wu, (aka Susan Wu); Cheung Leung Tang, (aka Tony Tang); Yi Hsia Tang; Betsy Wu Tang; Geng Yan Wu, (aka Jenny Wu); Robert Ling Fu, (aka Ling Fu); David Tang; Jonathan Tang; Man Hing Wong, (aka Tang Man Hing Wong); Nancy Wu; George Tang; Lincoln Computer Center in Gaithersburg, Maryland and Philadelphia, Pennsylvania; UCR of New Jersey; Alfred Robert Verna, (aka Bob Verna); Linda L. Verna, (aka Lynn Verna); Vecchia and Wolfer; and, Judith Wolfer.

1. COMPLAINT ON TREASON

The Petitioners and the Respondents met in July, 1994, and were engaged in business ventures together when it was revealed to the

Petitioners that the Respondents' loyalty, and support lies with The Peoples Republic of China even though the majority of the Respondents are naturalized United States citizens. Through these business relationships the Respondents requested that the Petitioners aid and abet them in carrying forth various activities that would injure the United States. Conclusive evidence, in addition to that which was submitted with the Complaint, would have been presented at trial, or even a hearing, had ever been convened concerning these allegations of breaches of national security.

Petitioners filed a 'Complaint Under Treason and Racketeering Influenced Criminal Organizations Act (RICO)' on February 9, 2000, in the District Court for the District of Columbia which was assigned to the Honorable Judge Colleen Kollar-Kotelly pursuant to Local Rule 40.5 since Petitioners had filed another separate case on October 25, 1999, *Samuel Jacobs, et al, v. The American Express Company, et al,* (hereafter known as "American Express"), District Court Case Number 99-2809, and Case Number 01-275 in this Court.

This Complaint on treason against the United States was based on *"levying War against them, or in "adhering to their Enemies, giving them Aid and Comfort"* in violation of Article III, Section 3, of the Constitution of the United States *"on the Testimony of two Witnesses to the same overt Act, . . ."* The Petitioners, *"owing allegiance to the United States and having knowledge of the*

commission of any treason against them, . . ." disclosed and made known to "*. . .some judge of the United States*" their knowledge of the Respondents' actions pursuant to Title 18 U.S.C.A. § 2382 (Misprison of treason). Petitioners alleged that the Respondents had, through overt acts, violated Title 18 U.S.C.A. § 2381 (Treason), § 2384 (Seditious conspiracy), and § 2386 (Registration of certain organizations).

The Petitioners aver that these overt acts of treason and espionage were committed through predicate acts in violation of the Racketeering Influenced Criminal Organizations Act (RICO) in order to inflict "*injury upon the United States to the advantage of a foreign nation*" pursuant to Title 18 U.S.C.A. § 793 (Gathering, transmitting, or losing defense information), § 794 (Gathering or delivering defense information to aid foreign government), and § 798 (Disclosure of classified information). These valid RIOC statutes which were enacted for the crimes of espionage are cited as "specified unlawful activities" under Title 18 U.S.C.A. § 1956(c)(7)(D) (Laundering of monetary instruments) which is a definition of RICO under Title 18 U.S.C.A. § 1961(1) (Definitions).

The Hon. Judge Kollar-Kotelly issued an Order on March 14, 2000, in the American Express case which combined it with this Complaint, and it stated: "*However, fourteen days later, Petitioners filed a new lawsuit with a Complaint numbering 129 pages with 25 attached exhibits.*" The American Express Defendants complied with that order by forming a criminal conspiracy with the

Susan Wu, et al, Respondents, in violation of § 242 (Deprivation of rights under color of law), and their combined actions and submissions to the lower courts supported the cause of treason.

Petitioners requested that the Honorable Judge Colleen Kollar-Kotelly recuse herself on May 5, 2000, pursuant to Title 28 U.S.C.A. § 144 (Bias and prejudice of judge), § 372 (c)(1) (Retirement for disability; substitute judge on failure to retire; judicial discipline), and § 455 (Disqualification of justice, judge, or magistrate) because of the conspiracy formed by this Order. She issued an Order on June 14, 2000, refusing to recuse herself.

Petitioners filed the Notice of Appeal in the Court of Appeals on January 4, 2001, and requested that the Constitutional Question concerning Local Rule 40.5 be forwarded to the Attorney General of the United States pursuant to Rule 44 (Case Involving a Constitutional Question When the United States Is Not a Party) of the Federal Rules of Appellate Procedure and Title 28 U.S.C.A. § 2403 (Intervention by United States or a State; constitutional question). Judge Colleen Kollar-Kotelly issued a final order in this case on February 12, 2001.

On April 9, 2001, the Court of Appeals issued an Order dismissing this Complaint for reasons stated in their Order of March 15, 2001, in the *"related"* American Express case. On June 21, 2001, the Court of Appeals denied the Petitioners'

petition for rehearing and suggestion for rehearing en banc.

The Honorable John Ashcroft, Attorney General of the United States, was never notified of the Constitutional Question pursuant to Rule 44 and § 2403 by the Clerk of the Court of Appeals, but his office received hand delivered copies of the court papers from the Petitioners. All of the documents were returned to Petitioners on May 15, 2001, by Executive Officer Gwendolyn L. Turner on behalf of The Hon. John Ashcroft in violation of Title 18 U.S.C.A. § 2071.

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REASONS FOR GRANTING CERTIORARI

The decisions and opinions in the courts below raise timely, significant, and grave concerns about the Federal courts' interpretations and applications of Article III, Section 3 of the Constitution, which are in conflict with earlier well established precedents; and Petitioners question the support of these lower courts, through their opinions, for those who advocate the overthrow of this constitutional form of government.

The main assertion of the Petitioners' Complaint is treason, and secondly, RICO, the conduit by which, directly and indirectly, the treason and espionage statutes were violated by the Respondents. This appeal is a timely referral

to the valid citations under the RICO laws of the espionage statutes, and the historical precedents on treason. [1] (*See*, App. 69).

The framers of the Constitution included two types of treason in Article III, Section 3. Treason which is waged more internally than externally and advocates the overthrow of the constitutional form of Government of the United States *"consist only in levying War against them,. . "* [2]

The second form of treason is an attack on the United States by those who conspire *". . .in adhering to their Enemies, giving them Aid and Comfort."* To bring these "archaic" 18th century constitutional provisions and treason statutes

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[1] Government is so great a blessing, that the highest crime which can be committed, is treason. . . . What amounts to levying war? This question arose soon after the adoption of the constitution, in the several trials of Mitchell, Vigol, and Fries, for being engaged in the Pennsylvania insurrection, against the law imposing a duty upon distilled spirits, under the administration of Washington, and subsequently, in the trial of Aaron Burr, in the year 1807, and in the case of U. S. v. Hoxie [Case No. 15,407], in the year 1808. *Charge To The Grand Jury-Fugitive Slave Law*, 30 Fed.Case No. 18,263, pg. 1075, [1 Spr. 593.] District Court, D. Massachusetts, March, 1851.

[2] The expression "levying war," in the sense in which it is used in the constitutional provision defining treason, includes not only formal or declared war but also any forcible opposition, as the result of a combination, to the execution of any public law of the United States. *In re Charge to Grand Jury*, C.C.Va., 30 F.Cas.No. 18,276, 2 Wall.Jr. 134.

into relevance for the "modern" 21st century, one only has to remember September 11, 2001. [3]

The lower courts never have explained why a speedy trial was not quickly held upon *"the Testimony of two Witnesses"* and a complaint on treason. American defense aircraft drawings were alleged to have been stolen from a defense facility

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[3] This crime is defined by the constitution itself, and its magnitude, as well as the importance of a fit and rigid definition of it, may be inferred from the fact that it is the only offence defined by that instrument. It is there made to consist in levying war against the United States, or adhering to their enemies, giving them aid and comfort. This language is borrowed from an ancient English statute, enacted in the year 1352 (25 Edw. III), mainly for the purpose of restraining the power of the crown to oppress the subject by arbitrary constructions of the law of treason. At the time of the introduction of this language into our constitution, it had acquired a settled meaning, and that meaning has been adopted by the courts of the United States when they have had occasion, as unfortunately as they have had occasion, to interpret these words. This settled interpretation is, that the words "levying war," as used in the constitutional definition of "treason," include not only the act of making war for the purpose of entirely overturning the government, but also any combination forcibly to oppose the execution of any public law of the United States, with intent to prevent its enforcement in all cases, if accompanied or followed by an act of forcible opposition to such law in pursuance of such combination.

The following elements, therefore, constitute this offence: (1) A combination, or conspiracy, by which individuals are united in one common purpose. (2) This purpose being to prevent the execution of some public law of the United States by force (3) The actual use of force, by such combination, to prevent the execution of that law. *Charge to the Grand Jury, Neutrality Laws and Treason*, 2 Curt. 630, 30 Case No. 18,269; *Charge to Grand Jury, Treason*, 30 Fed.Cas. 18,276.

and smuggled out of the country by these Chinese Respondents as architectural drawings.[4] The alleged violations of Title 18 U.S.C.A. § 793, § 794, and §798 are actual and direct. The Court of Appeals issued their order dismissing the Petitioners' appeal on this treason case during the height of the Air Force airplane hostage situation in China in April, 2001;[5] and as this writ is being filed the country is again in a crisis, this time due

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[4] Thus Foster, in his treatise on Crown Law, says: "And the bare sending money or provisions, or sending intelligence to rebels or enemies, which in most cases is the most effectual aid that can be given them, will make a man a traitor, though the money or intelligence should happen to be intercepted; for the party in sending it did all he could; the treason was complete on his part, though it had not the effect he intended." *United States v. Greathouse et al,* 26 Fed.Cas.No. 15,254,[4 Sawy. 457; 2 Abb. U.S. 364] Circuit Court, N.D. California. Oct. 17, 1863, at page 24.

A charge that accused sent intelligence to the enemy is sufficient, and the letter sent need not be set out. *Respublica v. Carlisle,* Pa., 1 Dall. 35, 1 L.Ed. 661.

[5] Any intentional act furthering the hostile designs of the enemies of the United States gives aid and comfort and constitutes adhering to such enemies; (*U.S. v. Haupt*) the intent in giving aid and comfort to the enemies must be to render such assistance to an enemy of the Government, and not merely to assist another as an individual, (*U. S. v. Stephan,* and *U.S. v. Fricke*) and an act which intentionally strengthens or tends to strengthen its enemies, or which weakens, or tends to weaken, the power of the government to resist or attack its enemies, constitutes aid and comfort. *Cramer v. U.S.,* C.C.A.N.Y., 137 F.2d 888, reversed on other grounds 65 S.Ct. 918, 325 U.S.1, 89 L.Ed. 1441; *Tomoya Kawakita v. U.S.,* 72 S.Ct. 950, 343 U.S. 717, 96 L.Ed. 1249, rehearing denied 73 S.Ct. 5, 344 U.S. 850, 97 L.Ed. 660.; and *Haupt v. U.S.,* Ill., 67 S.Ct. 874, 330 U.S. 631, 91 L.Ed. 1145, rehearing denied 67 S.Ct. 1195, 331 U.S. 864, 91 L.Ed. 1869.

to terrorism. This writ is not 'hypothetical' or 'conjectural.' These acts of treason are real.

2. Lower Courts' Constitutional Divergence.

Fact 1: The Judiciary is one of the three major branches of the Federal Government and this power is a "force" through the courts' interpretation of the Acts of Congress pursuant to Article III and Article VI, paragraph 2.

Fact 2: Each judicial officer is a part of this "force" pursuant to Article III, Section 1.[6]

Fact 3: The failure of the judges as part of this "force" to interpret and execute the enactments of

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[6] And as to the danger to be apprehended from an independent Judiciary; what can it be? Whence can it arise? The number of judges of the United States, must necessarily be curtailed; increase them, even as far as the imagination of any gentleman will carry him, still they cannot act effectually without the aid of the Executive and Legislature. They are besides scattered over an immense continent; never assembled together in a body; and four-fifths of them will in all human probability, remain utter strangers to each other, except by name and reputation. They neither wield the sword, nor have the purse-strings at their command. They cannot move until the other two branches have acted. They can neither say what laws are to be made, or direct what measures must be pursued. Their whole power consists in assisting to carry the laws and measures; adopted by the other two branches, into operation; in dealing out justice, protecting the weak against the strong, and restraining and checking the unconstitutional attempts of the Government. Their only shield is the Constitution. Their only force, argument. HISTORY OF CONGRESS. H. of R. *Judiciary System*, February, 1802, Page 692.

Congress when so they are specifically directed, and thereby nullify them, is a violation of Article VI, paragraph 2.

Fact 4: Congress first enacted Act of May 8, 1792, ch.36, §11, 1 Stat. 278, which is now Title 28 U.S.C.A. § 144 which compels district judges to recuse themselves for bias and prejudice.[7] No statute gives any judge permission to form a criminal conspiracy in violation of Title 18 U.S.C.A. § 242 from the bench, and the Court of Appeals affirmed this criminal act by failing to order a new trial with a new judge. [8]

Fact 5: The District Court, the Court of Appeals, and the Attorney General of the United States have failed in their duty to enforce the execution of the aforementioned specifically defined statutes as enacted by Congress and this is a conspiracy to defraud the Government of honest services pursuant to Title 18 U.S.C.A. § 371.[9] The refusal of these officers to fulfill their obligations pursuant to the Constitution and the

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[7] Two statutes pertaining to of a judge are not redundant but complementary, even when the only ground for recusal alleged is bias or prejudice. 28 U.S.C.A. § 144, 455(b)(1). *U.S. v. Sibla*, 624 F.2d 864.

[8] Government officials, as a class, could not be totally exempt, by virtue of some absolute immunity, from liability under its terms. *United States v. Classic*, 313 U.S. 299, 326.

[9] The obligation which the Constitution of the United States imposes upon the Judiciary to support the Constitution would be nugatory, if it were dependent on either of the other branches, or in any manner subject to control by them, since such control might operate to the destruction of the Constitution. HISTORY OF CONGRESS, H. of R., *Judiciary System*, February, 1802, Page 681.

laws has caused the denial of a fair and impartial jury trial pursuant to Amendment VII. [10]

A. Cause of Personal Injury.

Although the allegations of treason are general affronts to all of the Citizens of the nation, the obligation to report treason is authorized by law, and the Petitioners' cause of injury from these alleged overt acts of treason and espionage are specific and have been itemized through evidentiary facts and exhibits in their Complaint, and, they can be supplemented through discovery and testimony in open court. The cause of injury to the Petitioners' good name and their business is directly attributable to: 1) the Respondents' use of joint business ventures in attempts to directly and indirectly supply aid and intelligence for the advantage of another nation to the injury of the United States; 2) the criminal conspiracy formed by the Order of the Hon. Judge Colleen Kollar-Kotelly which increased the Petitioners' injuries by adding sympathizers to treasonous causes; and, 3) the contribution by the American Express to defend these acts of treason committed through RICO violations which are being increased in number and severity against the Petitioners in America and other countries.

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[10] Right to trial by jury in a civil RICO case exists because the Supreme Court of the United States has long upheld this right pursuant to the antitrust laws and precedents which carry such a right. *Fleitman v. Welsbach St. Lighting Co.*, 240 U.S. 27 (1916) (Holmes, J.).

1. The Respondents have suffered irreparable damage upon the Petitioners' credibility and standing in the court and business community with their feloniously and fraudulently portrayed "bills" for the Respondents' American Express cards which the American Express attorneys submitted at the settlement conference for Case Number 99-2809 before Magistrate John M. Facciola on April 19, 2000. The submission of the Respondents' "bill" in that conference for that "related" case completed the overt act of conspiracy of the Order of March 14, 2000.

2. The Respondents perpetrated several schemes that satisfy the RICO definitions in order to commit their treasonous acts. The Court's Order completely ignored the Petitioners' evidentiary fact that Respondent Tony Tang (aka Cheung Leung Tang) had previously been convicted for bribing officials in the United States District Court for the Eastern District of Pennsylvania, (Judge Reid presiding).[11] The lower court failed to address the Petitioners' statement that several investigations by the Federal Bureau of Investigation had been conducted concerning the "activities" of Respondent Susan Wu and her "family."[12] The Respondents' repetitive criminal

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[11] When the overt act is proved by two witnesses, it is proper to go into evidence to show accused's course of conduct at other places and the purpose for which he went to that place where the treason is laid, and, if he went with a treasonable design, the act of treason is conclusive. *U.S. v. Cramer,* C.C.A.N.Y., 137 F.2d 888, reversed on other grounds 65 S.Ct. 918, 325 U.S. 1, 89 L.Ed. 1441.

[12] Every person owing allegiance to the United States may subject himself to the penalties of treason. Allegiance is of

actions are verified by two Federal agencies within ten years and satisfy the "pattern of racketeering activity" requirement pursuant to Title 18 U.S.C.A. § 1961(5).

3. The *Susan Wu, et al,* Respondents gave copies of fraudulent newspaper articles written by a bribed newspaper reporter to the American Express attorneys in Case Number 99-2809 which were used as a defamation of character attack on the Petitioners. The American Express submitted the newspaper articles as an exhibit in their answer to the Complaint on May 26, 2000, and this exhibit had the fax number of the Respondents in *Susan Wu, et al,* on the top of the exhibit. Respondents' "extrajudicial source" of information is an affront on the integrity and reputation of the Petitioners which severely injured not only their cause, but affected them with real and actual damages. This "extrajudicial source" of influence denied the due process of the law by influencing the court to deny a fair and impartial jury trial, intensified the bias and prejudice of the Court, and aided in the dismissal of this treason case without a trial. [13]

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two kinds,- that due from citizens and that due from aliens resident within the United States. Every sojourner who enjoys our protection is bound to good faith towards our government, and though an alien, he may be guilty of treason by co-operation either with rebels or foreign enemies.] *Charge To The Grand Jury*, 30 Case No. 18,274 [2 Spr. 292.] District Court, D. Mass., March, 1863.

[13] "And therefore the judges ought not to deliver their opinions beforehand upon a case put and proofs urged on one aide, in the absence of the party accused." "For how can they be indifferent, who have delivered their opinions

B. Injury In Fact.

The Petitioners set forth allegations that address the period of the conspiracy, (five years), the object of the conspiracy, (espionage against the United States through RICO violations), and the certain actions of the alleged conspirators taken to achieve that purpose, (placement of computers with transmitting devices into the offices of the Federal government, theft of defense drawings, and money laundering). The additional elements included the testimony of two witnesses of the Respondents' agreement to commit the predicate and overt acts with the knowledge that the acts were not only a part of a pattern of racketeering activity, but were crimes against the United States.[14]

C. Petitioners Would Prevail Upon This Probable Outcome

This genuine case on treason is marked with a transparent forewarning of a "clear and present danger" concerning the national security of this nation. The Petitioners have complied with the laws of the United States and rules of the court to

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beforehand without hearing of the party, when a small addition or subtraction may alter the case?" *U.S. v. Watkins*, 28 F.Cas.No. 16,649, at Page 451.

[14] The courts are split on the issue of whether a defendant must actually agree to commit the predicate acts *himself or herself* in order to be liable under § 1962 (d). The majority rule recognizes that a defendant need not personally commit the predicate acts as long as he or she actually agrees to their commission by another party. *Shearin v. EF Huton Group, Inc.*, 885 F.2d 1162, 1166 (3rd Cir 1989).

bring forth these issues and have met every challenge with evidentiary facts. The Petitioners' complaint is not some attempt to avoid any issues fairly presented in court, and yet, their every attempt to bring forth these grave matters before some judge of the United States has been scoffed and dismissed through superficial technical innuendos.

Pursuant to Article III, Section 3, of the Constitution this crime must be proved *"on the testimony of two Witnesses to the same overt Act, or on Confession in open Court."* The Petitioners have been denied this right to perform a constitutional 'duty' to bring forth their testimony in court, and this is a violation of the only crime cited in the Constitution.[15] Upon the evidence

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[15] Mr. N. admitted that the cases of insurrection and unlawful combination against the Government, ought to be provided against, and if the gentleman had proposed a resolution for the continuance of those parts, he would not have objected. No, the objectionable part was that which the people of the country, in a voice of thunder, had said ought not to have been enacted, and which, therefore, now ought to be suffered to sleep—that part which stifles every investigation into the affairs of the Government. It was certainly true, that the existence of this law forbade inquiry into the affairs of the Government, for who (most particularly having those instances in view) would dare scrutinize into the conduct of men in power, when they could apprehend that they should afterwards be handled by a court and jury so unlikely to do impartial justice to them? It must prevent men saying what they think, much less what they know; for, though it might be truth, how could they assure themselves of their own testimony?

What, he asked, had the Government to fear from untruth? The publication of falsehood must carry the evidence of its infamy, and would undoubtedly meet its due

and testimony that would have been submitted in the jury trial, the probable outcome would have favored the Petitioners.

3. District Court Order of February 12, 2001

The Order of February 12, 2001, states an assemblage of reasons to dismiss the Complaint citing precedents unrelated in substance or statutory opinion to the gravity and significance of the issues of treason and espionage.[16] The Court's Order of February 12 contains many misstatements concerning the content of the Petitioners' Complaint and pleadings. Inappropriate referrals to statute laws and precedents are of major importance and the Petitioners address this Order as follows, to-wit:

I. Background

The Respondents never replied to the Petitioners' response to the Respondents' motion to dismiss. Although the lower court stated this

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appreciation. The characters of public men, in whom the people of this country had been wont to repose confidence, need not shrink at the apprehension of the publication of falsehood. The people would discriminate, and to their own observation it might with safety be confided; for the truth must ultimately be made to appear. Mr. Nicholson from Maryland, HISTORY OF CONGRESS, H. of R., *Sedition Act*, January, 1801, Page 923.

[16] Having so legislated, it has been become the clear duty of the courts of the United States to take cognizance of these offences, and it is to be expected that they will discharge with fidelity and firmness a duty so important to their country and to the peace of the world. *Charge To The Grand Jury-Treason*, 30 Fed. Case No. 18,274.

on App. 10, it failed to apply Rule 8 (d) of the Federal Rules of Civil Procedure to the Petitioners' response contained averments which have been "*admitted when not denied in the responsive pleading.*"

The Petitioners never stated that they reside in Washington, D.C. (App. 10). This is an irrelevant issue since the treason statutes and precedents dictate that the trial shall be held in the district where the crimes were committed.[17] A RICO civil action can commence pursuant to Title 18 U.S.C.A. § 1965(a): *"anywhere such person resides, is found, has an agent, or transacts his affairs."* [18]

The crimes of treason, and RICO, are asserted by evidentiary facts to have been committed in the District of Columbia where the Respondents are alleged to have delivered computers that they manufactured containing transmitting devices for

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[17] The act of congress, passed the 2d of March, 1793 (12 Swift's Laws, p. 226, § 3 [1 Stat. 333]), empowers the judges to "direct a special session of the circuit court to be holden for the trial of criminal cases, at any convenient place within the district, nearer to the place where the offences may be said to be committed, than the place, or places, appointed by law for the ordinary sessions;" *U.S. V. Insurgents,* 26 F.Case No. 15,442, page 499.

[18] Treason against the United States may be committed by any one residing or sojourning within its territory and under the protection of its laws, whether he be a citizen or an alien. 1 Hale P.C. 59, 60, 62; 1 Hawk. P.C. c. 2, § 5; W. Kel. 38. Pg. 1048. *Charge To The Grand Jury – Treason,* 30 Fed. Cas. 18,276,[2 Wall. Jr. 134; 4 Am. Law J. (N.S.) 83; 5 Pa. Law J.R. 55; 9 West. Law J. 163.] Circuit Court, E.D. Pennsylvania. Sept. 29, 1851.

the Chinese Government to the F.B.I., the Treasury, the Internal Revenue Service, the Department of Commerce, and the Department of Justice; and, the Pentagon and the Navy Yard in Virginia. Some of these machines were distributed through the Respondents' agent whose minority owned business is also in the District. The Petitioners have met the requisite standing to bring this suit through these specifically cited aforementioned statutes, through evidence and exhibits submitted, and they can supply further true and correct evidence in trial. App. 11 states: *". . .as Plaintiffs allege that Defendants failed to register as members of an organization that is, in Plaintiffs' estimation, subversive."* Petitioners respond to Title 18 U.S.C.A. § 2386 in footnote.[19]

On App. 12, n. 5, the Court inappropriately stated: *"While Plaintiffs allege a host of constitutional and civil rights violations, they have not alleged that any named Defendants have acted "under color of state law," 42 U.S.C. § 1983, or that any other civil rights violations which do not require a state action trigger have been committed. See, e.g., 42 U.S.C. § 1981(c)."* The District is a "State;" and neither Petitioner is a member of the

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[19] The supremacy of the constitution, in all its provisions, is at the very basis of our existence of a nation. He, whose conscience, or whose theories of political or individual right forbid him to support and maintain it in its integrity, may relieve himself from the duties of citizenship, by divesting himself of its rights. But while he remains within our borders, he is to remember, that successfully to instigate treason is to commit it. *Charge to the Grand Jury—Neutrality Laws and Treason*, 30 Fed. Cas.No. 18,269, 2 Curt. 630, Circuit Court, C. Massachusetts. Oct. 15, 1851.

Negro race, so, therefore, they are not allowed to refer to § 1981 since it is specific in its scope.

The Court's Order of February 12, 2001, states that: *"Plaintiffs thus have no right to enforce the criminal laws of the United States."* The footnote for the same paragraph also states (App. 18, n. 10) that: "It is clear that any citizen should not remain silent in the face of "a situation in which the ordinary citizen would ordinarily speak out." *Jenkins v. Anderson*, 447 U.S. 231, 443,[20] (1980) (Stevens, J. concurring)." Upon research of this citation, the full extent of that quote's footnote supports rather than challenges the Petitioners' assertions. [21]

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[20] A clerical error—should have designated the page as 243.

[21] There is, of course, no reason why we should encourage the citizen to conceal criminal activity of which he has knowledge. In *Roberts v. United States*, 445 U.S. 552, 557-558, we pointed out:

"Concealment of crime has been condemned throughout our history. The citizen's duty to 'raise the "hue and cry" and report felonies to the authorities,' *Branzburg v. Hayes*, 408 U.S. 665, 696 (1972), was an established tenet of Anglo-Saxon law at least as early as the 13th century. 2 W. Holdsworth, History of English Law 101-102 (3rd ed. 1927); 4 *id.*, at 521-522; see Statute of Westminster First,3 Edw. 1, ch. 9, p. 43 (1275); Statute of Westminster Second, 13 Edw. 1, 4, and 6, pp. 112-115 (1285). The first Congress of the United States enacted a statute imposing criminal penalties upon anyone who, 'having knowledge of the actual commission of [certain felonies,] shall conceal, and not as soon as may be disclose and make known the same to [the appropriate] authority...' Act of Apr. 30 1790, § 6, 1 Stat. 113. Although the term 'misprision of felony' now has an archaic ring, gross indifference to the duty to report known criminal behavior remains a badge of irresponsible citizenship.

The District Court advised that the Petitioners should: *"take heart that a conviction for Misprision of a Felony, 18 U.S.C. § 4, requires an "affirmative step to conceal the crime. Mere failure to report the felony is not sufficient."* (App. 18). The Court erred in citing § 4, and the two cases related to it as a basis for dismissal. The 'misprison of treason' statute, Title 28 U.S.C.A. § 2382 was originally enacted as 1 Stat. 112. It is a separate law from 'misprison of felony,' Title 18 U.S.C.A. § 4, which was originally enacted as 1 Stat. 113. These statutes were defined and separated because of the punishment for treason. The Civil War caused Congress to revise certain aspects of the punishment for treason. [22] Petitioners' Complaint confronts the Respondents' alleged overt acts of treason pursuant to Title 18 U.S.C.A. § 2381, and other "garden variety" white collar crimes.[23]

"This deeply rooted social obligation is not diminished when the witness to crime is involved in illicit activities himself. Unless his silence is protected by the privilege against self-incrimination, . . . the criminal defendant no less than any other citizen is obliged to assist the authorities." (Footnote omitted.)

[22] The construction of the act of July 17, 1862, so the punishment of treason is, that Congress intended: 1. To preserve the act of 1790 [1 Stat. 112], which prescribes the death penalty in force for the prosecution and punishment for offences committed previous to July 17, 1862, unless the parties accused are convicted under the act of the latter date for subsequent offence; and, 2. To punish treason thereafter committed with death, or fine and imprisonment, in the discretion of the court, unless the treason consists in engaging in or assisting a rebellion or insurrection; in which event, the death penalty is to be abandoned, and a less penalty to be inflicted.

[23] Direct proof of the combining may be found in declared purposes of the individual party before the actual outbreak,

II. Discussion

The Court stated in its Order of February 12, 2001, that: *"Plaintiffs thus have no right to enforce the criminal laws of the United States."*[24]

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or it may be derived from proceedings of meetings in which he took part openly, or which he either prompted or made effective by his countenance or sanction, commending, counseling, or instigating forcible resistance to the law.

Direct proof of the purpose, however, is not legally necessary; the concert of purpose may be deduced from the concerted action itself, or it may be inferred from facts occurring at the time, or before or afterwards. *Charge to Grand Jury—Treason.* 30 Fed.Case No. 18,276; [2 Wall. 134; 4 Am.Law J.(N.S.)83; 5 Pa.Law J.R. 55; 9 West. Law J. 163.]; *U.S. v. Fries*, 9 Fed.Cas.No. 5,126; *U.S. v. Bollman*, 4 Cranch 8 U.S. 75; and *U.S. v. Burr*, 25 Fed.Cas.No. 14,692a. 4 Cranch (8 U.S.) 455.]

[24] In hearings before the Senate Judiciary Committee, then Assistant Attorney General (now Ninth Circuit Judge) Steven S. Trott stated:

[I]n gauging the overall deterrent value of auxiliary enforcement by private plaintiffs, the deterrence provided by the mere threat of private suits must be added to the deterrence supplied by the suits that are actually filed. Furthermore, as the federal government's enforcement efforts continue to weaken organized crime and dispel the myths of invulnerability that have long surrounded and protected its members, private plaintiffs may become more willing to pursue RICO's attractive civil remedies in organized crime contexts . . . Finally, civil RICO's utility against continuous large-scale criminality not involving traditional organized crime elements should be kept in mind. These considerations suggest that private civil RICO enforcement in areas of the organized criminality may have had a greater deterrent impact than is commonly recognized, and .. . might be expected to produce even greater deterrence in the future. *Oversight on Civil RICO Suits: Hearings before the Senate Committee on the Judiciary*, 99th Cong., 1st Sess. 40-41(1985).

(*See* App.17). The statutes are explicit and there is no vagueness or generality to them. Title 18 U.S.C.A. § 1964(c): "***Any person*** injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States . . ." [25] (Emphasis added). This statute is not vague or confusing, and it is as Congress intended.

A. The Criminal Acts

Judge Colleen Kollar-Kotelly's final order of February 12, 2001, (App.16) states that: *"Further, Plaintiffs have no right to a private cause of action unless those acts explicitly or implicitly provide such a right."* The Petitioners assert that Title 18 U.S.C.A. § 1964 and § 1965 explicitly, and implicitly, provide such a right to file a "civil" complaint under RICO; and Title 18 U.S.C.A. § 2382 commands the Citizen to file a declaration under of seditious conspiracy under Title 18 U.S.C.A. § 2384.[26] The gravity of treason is a

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[25] Section 904(a) of Organized Crime Control Act of 1970, 84 Stat 947, directs that "[t]he provisions of this Title shall be liberally construed to effectuate its remedial purposes." The Supreme Court also stated that: "Indeed, if Congress' liberal-construction mandate is to be applied anywhere, it is in § 1964, where RICO's remedial purposes are most evident." *Sedima, S.P.R.L. v. Imrex*, 473 U.S. 479, 492, n.10.

[26] Under the act of 1790, defining and punishing treason, it has been held by the courts, that to conspire to overthrow the government, or to do any hostile act against it, did not invoke the crime of treason, unless there was an attempt to consummate the treasonable act. Hence the necessity of the late statute, to meet the case of a treasonable conspiracy. And it is perhaps to be regretted that this provision had not been a part of the act of 1790. With such a provision of

matter of national security and deserves an indifferent court. The lower courts have integrated each and every one of the officers who have signed those orders into this conspiracy of treason.

B. Criminal RICO Violations

The Order quotes all of the appropriate rulings that have been issued in the major RICO cases in this and other courts. On App. 19 the Court refers to Title 18 U.S.C.A. § 1961(1) as § 1661(1) and again the Petitioners believe this is a clerical error even though it occurs repeatedly. The Court erred in stating that Title 26 U.S.C.A. § 7201 is not a *"proper predicate act for a RICO claim."* Title 18 U.S.C.A. § 1961(1) cites Title 18 U.S.C.A. § 1956 (Laundering of monetary instruments) in its list of definitions, and § 1956(a)(1)(A)(ii) includes the following as a "specified unlawful activity": *"Whoever. . .with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or"* (App.19) On the same page the Court states: *"Plaintiffs do allege a number of valid RICO predicates, such as money laundering and wire fraud."* Petitioners respectfully request that this Honorable Court

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law, properly enforced, there is reason to believe many persons who have been prominent in our national affairs, and once high in the confidence of the people, would have been the subjects of its penalties; and thus the great rebellion now in progress may have been prevented. *Charge To Grand Jury-Treason,* 30 Fed.Case No. 18,272, pg. 1038. [1 Bond, 609.] Circuit Court, S.D. Ohio. Oct., 1861.

interpret what sections of § 1956 are considered "*valid*" and which sections are not.

Petitioners never received a copy of the Order of February 12, 2001, due to the incorrect addresses on the Order, nor did they receive a call from the Clerk's office concerning any returned mail. Judge Colleen Kollar-Kotelly did not fax the order because the Petitioners are not attorneys. This also is a denial of equal protection of the law.

4. Court of Appeals Orders of April 9, 2001, and June 21, 2001.

"*For the reasons stated in Jacobs v. American Express Co., this court therefore lacks jurisdiction over the appeal.*" With this statement the Court of Appeals completed the conspiracy. The appeal was filed for "fraud upon the court" pursuant to FRCvP Rule 60(b) and FRAP Rule 4(a)(B)(i), and it falls under the "collateral order doctrine" pursuant to Title 28 U.S.C.A. § 1291 (Final decisions of district courts).[27] Petitioners' appeal met the criteria due to Constitutional violations.

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[27] For order which is not final decision to be appealable under collateral order doctrine, it must be final rather than provisional disposition of Issue, it must not be merely a step toward final disposition of merits, it must be shown that rights asserted would be irreparably lost if review is postponed until final judgment, there must be some evaluation of competing considerations underlying all questions of finality, the inconvenience and costs of piecemeal review on the one hand and danger of denying justice by on the other. *Rodgers v. US. Steel Corp.*,C.A.3 (Pa.) 1976, 541 F.2d 365.

The decisions of the Court of Appeals involving the construction and application of the enforcement of multiple Federal statutes is of grave importance, and should be reviewed because the question is significantly important and in direct conflict with the earliest preeminent decisions of this Court pertaining to the violation of these Federal laws.[28]

From the manner that Title 18 U.S.C.A. § 2382 is written, and from the precedents regarding its interpretation, the Congress in 1790 never conceived that "*some judge of the United States*" would fail to do his or her duty to enforce this statute by lightly dismissing a case on treason before the witnesses or the evidence could be presented in court.[29]

The Attorney General of the United States received a copy of the appeal from the Petitioners, and his Executive Officer, Gwendolyn L. Turner, returned the Petitioners' papers to them in violation of Title 18 U.S.C.A. § 2071. (*See* App.26).

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[28] Certiorari should also be granted to determine whether the Court of Appeals has properly interpreted, applied, or extended a prior Supreme Court of the United States decision in a given situation. See, e.g., *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652.

[29] The combination must be directed against the law itself, but such a direct proof of this element of the offence is not legally necessary to establish its existence. The concert of purpose may be deduced from the concerted action itself, or it may be inferred from facts concurring at the time, or afterwards, as well as before. *Charge to Grand Jury—Treason.* 30 Fed.Case No. 18,276, *Id.*; *U.S. v. Fries*, 9 Fed.Cas.No. 5,126, *Id.*; *U.S. v. Bollman*, 4 Cranch 8 U.S. 75, *Id.*; and *U.S. v. Burr*, 25 Fed.Cas.No. 14,692a, *Id.*

Once again, the Attorney General violated FRAP Rule 44 and Title 28 U.S.C.A. § 2403 by failing to respond to a Constitutional Question, and heed the complaint of treason against the United States.[30] The Attorney General under color of the law has blatantly defied the authority of Congress by preventing, hindering, or delaying the Acts of Congress from being executed in violation of Article II, Section 2, and Article VI.

CONCLUSION

The court below issued orders so totally devoid of evidentiary support as to render the ruling unconstitutional under the Due Process Clause of the Fourteenth Amendment, and Article III, Section 3. This writ is dependent on the type of issue involved, the way in which it was decided below, the status of the law on the matter and the correctness of the decision below.

By refusing to enforce these statutes as Congress intended, the lower courts have violated Article IV, Section 1, of the Constitution of the

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[30] That Rule 33(2)(b) [now Supreme Court Rule 29(4)] was adopted on June 20, 1960, 363 U.S. 859, after the Court had heard oral argument in *International Association of Machinists v. Street* and discovered that the United States had not been served and had not been notified that the constitutionality of a section of the Railway Labor Act had been drawn into question in that case. 363 U.S. 825. The Street case was set for reargument, following certification to the Attorney General as to the constitutional question and intervention by the United States. See 367 U.S. 740. The rule was promulgated to prevent a repetition of this situation.

United States by denying that the *"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."* All United States courts in all States and Territories follow the Constitutional provision of Article IV, Section 1, that the Congress shall determine the *"Manner in which such Acts, Records, and Proceedings shall be proved, and Effect thereof."* These Petitioners have been singled out and ostracized by the District Court and the Court of Appeals with their refusal to adhere to the aforementioned statute laws in this writ.

Pursuant to Article IV, Section 2, the Petitioners have been denied the same *"Privileges and Immunities of Citizens in the several States"* through the failure to grant them their day in court. This action to deny the same Privileges and Immunities to these Petitioners as other Citizens enjoy is a violation of the Petitioners' civil rights pursuant to Title 28 U.S.C.A. § 1343, and, Title 42 U.S.C.A. § 1985 which was enacted pursuant to Amendment XIV. Article IV and Amendment XIV work together to insure that no individual State, and the District is considered a State by the Fed. R. of Civ. Proc., has the power to prevent justice, trial by jury, due process of the law, equal protection of the laws, and other constitutional rights.

The Petitioners have been denied the same *"Privileges and Immunities of Citizens in the several States"* pursuant to Article IV, Section 2, because these courts use the term "liberty" under

the English law: *"Privilege held by grant or prescription by which some men enjoy greater benefit than ordinary subjects. . ."* (Bouvier). These Officers have annulled their Oaths to enforce the Constitution of the United States which they were appointed to preserve, and they have allowed treason against the United States to flourish.

To deny Constitutional rights to one Citizen is to condemn all Citizens to involuntary servitude. The ruling of the Court of Appeals for which review is being sought is in direct conflict with previous decisions of this esteemed Court. Your Petitioners pray that this Honorable Court grant this writ of certiorari, and order a jury trial of thirty-five jurors for this cause of treason.

Respectfully submitted,

Samuel K. Jacobs, and,
Nancy Heckerman
1155 Connecticut Avenue
Suite 300
Washington, D.C. 20036
(202) 429-6545

APPENDIX

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-7007 **September Term, 2000**

00cv00231

Filed on: (Stamp)
UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
JUNE 21, 2001
CLERK

Samuel Jacobs and Nancy Heckerman,
Appellants

v.

Susan Wu, a/k/a Gung Sou Wu, Individually and Jointly, et al.,
Appellees

BEFORE: Harry T. EDWARDS, Chief Judge; Stephen F. WILLIAMS, Douglas H. GINSBURG, Circuit Judges

ORDER

Upon consideration of the motion for amended notice of appeal, the opposition thereto, and the reply; the petition for rehearing; and the motion to correct inadvertent error and to strike, it is

ORDERED that the motion for amended notice of appeal be denied. This court lacks authority to extend the time for filing a notice of

appeal. See Fed. R. App. P. 26(b)(1). It is

FURTHER ORDERED that the motion to correct inadvertent error and to strike be granted. It is

FURTHER ORDERED that the petition for rehearing be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: s/ Robert F. Bonner
Deputy Clerk/LD

◊

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-7007 **September Term, 2000**

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Samuel Jacobs and Nancy Heckerman,
Appellants

v.

Susan Wu, a/k/a Gung Sou Wu, Individually and Jointly, et al.,
Appellees

BEFORE: Harry T. EDWARDS, Chief Judge; Stephen F. WILLIAMS, Douglas H. GINSBURG, David B. SENTELLE, Karen LeCraft HENDERSON, A. Raymond RANDOLPH, Judith W. ROGERS, David S. TATEL and Merrick B. GARLAND, Circuit Judges

ORDER

Upon consideration of appellants' petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: s/ Robert A. Bonner
Robert A. Bonner
Deputy Clerk

◊

United States Court Of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-7007 **September Term, 2000**
00cv00231

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v.

Susan Wu, *a/k/a* Gung Sou Wu, Individually and Jointly, et al.,
Appellees

BEFORE: Harry T. EDWARDS, Chief Judge; Stephen F. WILLIAMS, Douglas H. GINSBURG, Circuit Judges

ORDER

Upon consideration of this court's order to show cause filed January 22, 2001, and the response thereto, it is

ORDERED that the order to show cause be discharged. It is

FURTHER ORDERED that this appeal be dismissed for lack of jurisdiction. As in

appellants' related case, Jacobs v. American Express Co., No. 00-7254 (D.C. Cir. Mar. 15, 2001), appellants appealed interlocutory orders, but failed to note an appeal from the district court's final order granting summary judgment. For the reasons stated in Jacobs v. American Express Co., this court therefore lacks jurisdiction over the appeal.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

(INITIALS FOR JUDGES):
Harry T. EDWARDS, Stephen F. WILLIAMS, AND Douglas H. GINSBURG

◊

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAMUEL K. JACOBS, and
NANCY HECKERMAN,

Plaintiffs.

Civil Action No. 00-231 (CKK)

V.

SUSAN WU, et al,
Defendants.

FILED
FEB 1 2 2001
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is, this 12 day of February, 2001, hereby

ORDERED THAT Defendants Judith A. Wolfer, Esq., and Vecchia & Wolfer's Motion to Dismiss Plaintiffs' Complaint, or in the Alternative, for Summary Judgment [# 11] is GRANTED; it is further

ORDERED **THAT** Defendants Susan Wu, Jenny Wu, Betsy Wu Tang, Robert Ling Fu and Lincoln Computer Center's Motion to Dismiss Plaintiffs' Complaint, or in the Alternative, for Summary Judgment [# 12] is GRANTED; it is further

ORDERED THAT Defendants' request for sanctions pursuant to Federal Rule of Civil Procedure 11(c) is DENIED; and, it is further

ORDERED THAT Plaintiffs' Complaint is DISMISSED and that this is a final, appealable Order.

SO ORDERED.

S/ Colleen Kollar-Kotelly
COLLEEN KOLLAR-KOTELLY
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAMUEL K. JACOBS, and
NANCY HECKERMAN,

- Plaintiffs

v. Civil Action No. 00-231 (CKK)

SUSAN WU, et. al,

Defendants

Filed:
FEB 1 2 2001
NANCY MAYER WHITTINGTON, CLERK
U.S.DISTRICT COURT

MEMORANDUM OPINION

This case comes before the Court on motions to dismiss, or in the alternative, for summary judgment. on a number of different grounds. Plaintiffs bring this civil action alleging criminal conduct and various violations of the Racketeer Influenced and Corrupt Organization Act. After considering the voluminous complaint. Defendants' motions,[1] Plaintiffs' oppositions

[1] There are two sets of Defendants with two corresponding motions for dismissal. Defendants Judith A. Wolfer and the law firm of Vecchia & Wolfer filed a motion to dismiss on March 6, 2000. largely based on a theory of immunity. Apart from that theory, they also incorporate, by reference,

thereto, and the relevant law. the Court shall grant Defendants' motions for dismissal.

I. BACKGROUND

Plaintiffs, Samuel K. Jacobs and Nancy Heckerman, proceeding *pro* se. instituted this action originally in the federal district court for the District of Maryland. That case was voluntarily dismissed without prejudice pursuant to Rule 40(b) of the Federal Rules of Civil Procedure. Subsequently. Plaintiffs re-filed essentially the same claims in this Court, naming the original Defendants as well as the counsel for the original Defendants in the Maryland action. Counsel for Defendants was joined in the action because, Plaintiffs allege, counsel's insistence that Plaintiffs allegations were untrue constitutes aiding a criminal and tortfeasor.

Plaintiffs Jacobs and Heckerman are the financial director and president, respectively, of Main Street Computers, a software company in Rockville, Maryland.[22] *See* Compl. at ¶¶1 (a)-(b).

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the arguments contained in the motion to dismiss filed that same day by all of the other defendants. *See* Mem. of P. & A. in Supp. of Defs. Wolfer and Vecchia & Wolfers Mot. for Summ. J. at p. 7. Neither set of defendants filed a reply to Plaintiffs' oppositions.

[2] While the issue is not directly pertinent in this federal question case, *see* 28 U.S.C. § 1331, the Court notes that it is not clear where Plaintiffs reside. In the instant complaint, Plaintiffs allege that they reside in Washington, D.C. *See* Compl. at ¶¶ 1a, lb. However, in the original District Court of Maryland complaint, Plaintiffs alleged that they resided in Maryland. *See* Defs.' Ex. "A" at pp. 3-4.

There are sixteen named defendants (collectively, "Defendants"). See *Id.* at ¶¶ 1 (c)-(r). They include a number of alleged former business associates, their relatives,[33] and the attorney for the defendants in the previously filed action in the District of Maryland. *See Id.* Plaintiffs allege that Defendants engaged in multitudinous activities, which for the most part allegedly constitute violations of various federal criminal statutes.

In their massive and rambling complaint, Plaintiffs allege that Defendants have: (1) committed "Treason Against the United States," 18 U.S.C. § 2384 (Seditious Conspiracy): (2) failed to "Register in [sic] Communist Party," 18 U.S.C. § 2386;[4] (3) committed espionage. 18 U S.C. § 793 & 794: (4) laundered money. 18 U.S.C. § 1956; (5) engaged in wire fraud. 18 U.S.C. § 1343; (6) evaded federal taxes. 26 U.S.C. § 7201; (7) extorted, 18 U.S.C. § 1951; (8) defrauded the United States, 18 U.S.C. § 1031; (9) conspired to obstruct justice, 18 U.S.C. § 371 & 1512: and. (10) aided and abetted the violation of parole. Plaintiffs further allege various civil and criminal violations of the Racketeer Influence and Corrupt

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[3] Among the named defendants is Betsy Wu, the four year old daughter of defendants Susan Wu and Tony Tang.

[4] Plaintiffs allege a violation of 18 U.S.C. § 2685. However, the Court is unaware of such a section in Title 18 of the United States Code. Because Plaintiffs are pro Se, the Court liberally construes the complaint. With such a construction, it appears that Plaintiffs allege a violation of 28 U.S.C. §2386, us Plaintiffs allege that Defendants failed to register as members of an organization that is, in Plaintiffs' estimation, subversive.

Organization Act, 18 U.S.C. § 1961, *et seq.* ("RICO").[5] *See* (Compl. at ¶¶249-326.

Plaintiff pertinent allegations are as follows.[6] In 1994. Plaintiffs met some of the Defendants at the Lincoln Computer Center, where defendants Susan Wu, Jenny Wu, and Robert Ling Fu worked. *See Id.* at ¶ 36. Soon thereafter. Plaintiffs and Defendants engaged in a relationship of sorts. Plaintiff attempted to provide legal research for one of the defendants who had been convicted of tax evasion, even though Plaintiffs are not themselves lawyers. *See Id.* at ¶¶ 40, 52. Meanwhile, Defendants allegedly related to Plaintiffs a scheme for tax evasion, defrauding the United States, and espionage. *See Id.* at ¶¶ 37, 61, 65-66. Soon thereafter, Plaintiffs learned of a plan to transfer money from a shoe export

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[5] Plaintiffs also appear to allege that Detective Robin Dyer, of the Montgomery County Police Department, and others, violated Plaintiffs' civil rights in abrogation of, *inter alia.* 42 U.S.C. §1983. However, because those defendants are not named in the caption of the complaint, and were never served with the complaint, the Court will disregard all such references. *Sec Nix* v. *Hoke,* 62 F.Supp.2d 110, 112 n.1 (D.D.C. 1999) (dismissing complaint as to unnamed plaintiffs not joined as parties to the litigation). While Plaintiffs allege a host of constitutional and civil rights violations, they have not alleged that any named Defendants have acted "under color of state law." 42 U.S.C. § 1983, or that any other civil rights violations which do not require a state action trigger have been committed. *See,* e.g., 42 U.S.C. § 1981(c).

[6] At this stage in the proceedings. the Court takes all facts alleged by Plaintiff to be true. "Thus. in recounting as true many of the plaintiffs' allegations, the Court does not suggest that the allegations are indeed true." *Meng v. Schwartz,* 116 F.Supp.2d 92, 94 (D.D.C. 2000).

business that Defendants then owned to a coffee plant in he plant in Ukraine. *See Id* at ¶ 71. Defendants purported to offer Plaintiffs a share in the proceeds of this coffee business. *See Id* at *91* 76. Plaintiffs established a number of overseas bank accounts to facilitate this business partnership, but never saw any of the profits. *See id.* at ¶¶ 77-81. At some point, defendant Susan Wu approached Plaintiffs regarding another proposed partnership for the ownership and operation of an airplane that was to deliver chickens to China. *See Id.* at ¶ 111. This partnership collapsed as well, leaving Plaintiffs with unsatisfied debts. *See Id.* at ¶¶118, 121. These debts were created in part because of mailings that Plaintiff alleges constitute mail fraud. *See id.* at ¶ 125(b). Defendants apparently also procured a credit card for plaintiff Jacobs, with which plaintiff Jacobs incurred an outstanding debt of over $63,000. *See Id.* at ¶11 128-29. Plaintiff Jacobs claims this debt is a business expense, while Defendants argue that it is the product of Jacobs personal expenses. See *Id.* According to Plaintiffs, this disagreement over the credit card bill also constitutes an act of credit fraud. *See Id. at* ¶ 132. Lastly, two Montgomery County police officers visited Plaintiff Jacobs after defendant Susan WLI tiled a complaint for fraud, relating to the prior legal research performed by Plaintiff Jacobs. See *Id.* at ¶91 200. 207. Plaintiffs contend that, during the visit, Plaintiff Jacobs needed heart medication. *See Id.* at ¶ 212. They allege that the officers restrained Jacobs and temporarily barred him access to the required medication, although he

subsequently was allowed to retrieve it. *See Id.* According to Plaintiffs, this visit and the officers' conduct constitute a threat of violence, an attempted murder, and a host of constitutional violations. *See Id.* at ¶¶ 211-224.

Defendants plead numerous defenses. First, Defendants claim that Plaintiffs do not have standing to make their criminal or civil claims. Further, Defendants claim that Plaintiffs have failed to state a claim for which relief may be granted.[7]

II. DISCUSSION

Defendants bring their motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). The Court will not grant such a motion "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley* v. *Gibson,* 355 U.S. 41, 45-46 (1957). Defendants principally allege that Plaintiffs lack standing. First, Defendants contend

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[7] Defendants' counsel argues that she is entitled to immunity for any actions taken in connection with a court proceeding. *See United States v. Hurt, 543* F.2d 142. 167 (D.C. Cir. 1976); *Brown v. Collins,* 402 F.2d 209,212 (D.C. Cir. 1968). Defendants also raise other defenses applicable to the Defendants as a group. First, Defendants claim that Plaintiffs must plead with heightened specificity because this is an action for fraud. *See* Fed. R. Civ. p. 9(b). Second, Defendants assert that venue is not proper in this court because Plaintiffs have not alleged that a substantial number of the acts or omissions have occurred within this district. *See* 28 U.S.C. § 1961; 18 U.S.C. § I 965. Because the Court finds that Plaintiffs do not have the requisite standing to bring this suit, the Court does not address the Defendants' alternative theories.

that Plaintiffs do not have standing to bring a private claim premised on the criminal conduct alleged in the Plaintiffs' complaint. *See* Defs. Corrected Mot. for Summ. J. at p. 4. Second. Defendants assert that Plaintiffs do not have standing to bring the various RICO allegations because they have failed to allege (1) an injury in fact, and (2) a causal connection between Defendants' alleged adverse conduct and the harm Plaintiffs allegedly suffered. *See* Defs.' Mem. of P. & A in Supp. of Defs.' Mot. for Summ. J. at pp. 13-14.

Defendants' motions, although styled as a request for dismissal under Rule 12(b)(6) challenge Plaintiffs' standing. Therefore, the Court construes it under the jurisdictional rubric of Rule 12(b)(1). In reviewing a motion to dismiss for lack of jurisdiction pursuant to Rule 12(b)(1), district courts employ a standard similar to that used for 12(b)(6) motions.[8] See, e.g.. *Vanover v.*

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[8] There is a Circuit ,split on the question of whether challenges to "RICO standing" should be analyzed under 12(b)(1) or 12(h)(6). The Second Circuit has explicitly noted that dismissals for lack of standing should be considered 12(b)(l) motions, even in the RICO context, as the lack of standing strips the district court of Article III jurisdiction. *See Moore* v. *Painewebber,* 189 F.3d 165, 169 n.3 (2d Cir. 1999). The Third Circuit has ruled in the other direction. *See Maio* v. *Aetna Inc,*. 221 F.3d 472, 482 ti.7 (3d Cir. 2000) (holding that a lack of "RICO standing" is grounds for a 12(b)(6) dismissal because the allegations cannot support an essential element of the action) (collecting cases). The Court of Appeals for the District of Columbia Circuit has not yet addressed this question. This Court does not need to decide this issue, however, because the standards arc virtually identical, and because Plaintiffs were under notice

Hantman, 77 F. Supp. 2d 91. 98 (D.D.C. 1999) (citing *Pitney Bowes Inc. v. United States Postal Service.* 27 F. Supp. 2d 15. 19 (D.D.C. 1998)). When considering a motion to dismiss, the Court must resolve all factual doubts in favor of a plaintiff and allow a plaintiff the benefit of all inferences. *See EEOC St. Francis Xavier Parochial Sch,* 117 F.3d 621, 624 (D.C. Cir. 1997). However, "the court need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint. Nor must the court accept legal conclusions cast in the form of factual allegations." *Kowal v. MCI Communications Corp..* 16 F.3d 1271, 1276 (D.C. Cir. 1994).

A. *The Criminal Acts*

Plaintiffs allege violations of numerous criminal statutes. So far as those acts are alleged, in order to stand on their own, and not as allegations of predicate acts required for a RICO violation, it is long established that "'in American jurisprudence, at least, a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.'" *In re Kaminski,* 960 F.2d 1062, 1064 (D.C. Cir. 1992) (quoting *Linda R.S. v. Richard D.,* 410 U.S. 614, 619 (1973)). Plaintiffs thus have no right to enforce the

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that the Defendants' motion to dismiss attacked the issues of both RICO standing and Article III standing. *See* Defs. Mem. of P.& A. in Supp. of Defs.' Mot. for Summ. J. at pp. 13-14; *Maio,* 221 F.3d at 482 n.7 (noting that it is proper to consider the motion to dismiss for lack of standing despite the federal rules ambiguity because the plaintiff was on notice of the nature of the defendant's arguments).

criminal laws of the United States. See. e.g.. *United State v. Nixon,* 418 U.S. 683. 693 ("[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute *a* case.") (citing *Confiscation Cases,* 7 Wall. 454 (1869)). Further, Plaintiffs have no right to a private cause of action unless those acts explicitly or implicitly provide such a right. *See Thompson v. Thompson,* 484 U.S. 174, 179 (1987). From the face of the various statutes alleged to have been violated, it is clear that there is no explicit private cause of action.[9] Further, Plaintiffs have not argued that any of the criminal statutes cited provide for an implicit cause of action. Accordingly, the Court agrees with Defendants that Plaintiffs have no standing to enforce any of

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[9] For example, the Seditious Conspiracy statutes provides as follows:

> If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, or put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be *fined under this title or imprisoned not more than twenty years,* or both.

18 U.S.C. § 2384 (emphasis added). It is clear from its face of the statute that Congress intended seditious conspiracy to be a crime against the United States and did not explicitly provide for a private cause of action.

the alleged criminal violations.[10]

B. *Criminal RICO Violations*

To state a valid RICO claim, Plaintiffs must allege "'(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity."' *Pyramid Sec. Ltd. v. 1B Resolution. Inc.*, 924 F.2d 1114. 1117 (D.C. Cir.1991) *(quoting Sedima v. Imrex ('a* .473 U.S. 479.496 (1985)); *see also* 18 U.S.C. § 1962(a). The RICO statute itself enumerates the predicate offenses that constitute "racketeering activity." See 18 U.S.C. § 1961(1). To qualify as a "pattern" the predicate acts must have occurred during a ten-year period. *See* 18 U.S.C. §1961(5). Any person injured by a RICO violation may initiate suit so long as the injury is to the business or property of the plaintiff. *See* 18 U.S.C. § 1964(c). However, the Supreme Court has narrowed that otherwise expansive language to require that the specified predicate acts proximately cause the alleged harm. *See Holmes* v. *Sec. Investor Protection Corp.*. 503 U.S. 258.

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[10] Plaintiffs assert that they have a "duty" to inform the Court of a violation of the treason laws, lest they themselves violate 18 U.S.C. § 2382 (Misprision of Treason). *See, e.g.*. Compl. at 1 34. It is clear that any citizen should not remain silent in the face of "a situation in which the ordinary citizen would normally speak out." *Jenkins v. Anderson,* 447 U.S. 231, 443 (1980) (Stevens. J. concurring). However, Plaintiffs should take heart that a conviction for Misprision of a Felony, 18 U.S.C. § 4, requires an "affirmative step to conceal the crime. Mere failure to report the felony is not sufficient." *United States v. Graves,* 720 F.2d 821, 823 (5th Cir. 1983) (quoting *United States v. Davila,* 698 F.2d 715, 717 (5th Cir. 1983)).

268 (1992). "Proximate cause exists to ensure that a random third party who suffers merely from the misfortunes visited upon [him] by the defendant's acts' does not recover." *BCCI Holdlngs v. Khalil,* 214 F.3d 168. 174 (D.C. *Cir.* 2000) (quoting *Holmes,* 503 U.S. at 268) (alternation in original).

While Plaintiffs allege that Defendants have committed a number of wrong doings, only a few actually constitute RICO predicate harms. Sue 18 U.S.C. § 1661(1) (defining racketeering activity). Only those acts that are specified by section 1661(1) can form predicate acts for the purposes of a RICO violation. *See. e.g.. Frank v. D'Ambrosi,* 4 F.3d 1378, 1385 (6th Cir. 1993).While some of Defendants' alleged conduct may be violations of a law, that alone does not qualify them as predicate acts for purposes of RICO. For instance, Plaintiffs' allegations of tax evasion may constitute a violation of 26 U.S.C. § 7201, but such a violation is not a proper predicate act for a RICO claim. Likewise, breach of contract claims, or promissory estoppel claims, do nut constitute sufficient predicate acts. *Se,*. e.g., *id,* However, Plaintiffs do allege a number of valid RICO predicates, such as money laundering and wire fraud. Without commenting on the merits of such claims, or commenting on the sufficiency of the allegations, the Court concludes that Plaintiffs lack standing to bring those claims because they have not demonstrated a nexus between those allegations and the harms allegedly suffered.[11]

[11] The Court also has difficulty connecting the multiple allegations into a single pattern of ongoing activity. The

Assuming for the purposes of Defendants' motions that Plaintiffs' statements are true, the alleged RICO violations that constitute a pattern of racketeering activity must have proximately caused Plaintiffs' alleged harms for Plaintiffs to have standing to bring a Suit for RICO damages. *See, e.g., Allegheny General Hosp.* v. *Phillip Morris,* 228 F.3d 429. 443 (3d Cir. 2000); *Illinois ex rel Ryan Brown,* 227 F.3d 1042, 1045-46 (7th Cir. 2000); *Lyons v. Phillip Morris,* 225 F.3d 909. 914 (8th Cir. 200O) *Maio,* 221 F.3d at 482. In the context of RICO there is no bright line test to determine proximate causation. Some courts have required the plaintiff to be the intended victim of the RICO activities. *See In re, American Express v Co Shareholder Litigation,* 39 F.3d 395. 400 (2d Cir. 1996). This Circuit has explicitly disavowed the "intended victim test, and has followed the more amorphous and generalized "substantial factor" or directly traceable" analysis. *See BCCI Holdings.* 56 F. Supp. 2d at 56. (applying substantial factor test). *Rev'd in part,* 214 F.3d 168, 174 (D.C. Cir. 2000) (advocating a "directly traceable" analysis). This more generalized method of assessing causation entails a multifaceted balancing test looking at (1) the directness of the injury. (2)the difficulty of

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Supreme Court has held that acts constitute *a pattern* of racketeering activities if they are (1) related and (2) have some degree of continuity. Multiple acts committed by the same individuals are not, in and of themselves, sufficient. See *H.J., Inc..* v. *Northwestern Bell Telephone Co.,* 492 U.S. 229, 239-40 (1989). Here, the allegations of money laundering do not seem to have any connection to the various allegations of fraud, save for the fact that the same individua1s allegedly committed them.

appropriating damages between litigants, and (3) the possibility of another, more appropriate plaintiff vindicating the goals and purposes of RICO. See *Allegheny General Hosp* . 228 F.3d at 443 (citing *Steamfitters Local Union No 420 Welfare Fund v. Philip Morris,* 171 F.3d 912. 932 (3d. Cir. 1999). Here, the asserted injuries sound mainly in contract: Plaintiffs assert that but for Defendants' fraudulent activities. Plaintiffs would have realized profits from the various business schemes in which Plaintiffs and Defendants had formed partnerships. Such damages are too attenuated from the actual RICO violations alleged, fraud and money laundering, because they cannot be said to have flowed with any directness from the allegations. Quite the contrary the alleged RICO violations, such as money laundering in the coffee factory scheme. were actually designed to benefit Plaintiffs. The fact that Plaintiff did not benefit was not a result of the alleged RICO violations, but rather was a result of a possible contractual violation.[12] Furthermore, the fraud alleged in the credit card scheme did not harm Plaintiffs, but rather, if true, harmed the credit card company. Any harm that Plaintiffs suffered as a result of the alleged credit fraud was very attenuated and indirect, and therefore insufficient to confer RICO standing.

Allowing a RICO claim in this instance would explode the proximate causation

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[12] Of course, Plaintiff may not bring suit to enforce a contract that entails a violation of law. *See. e.g.,* 8 LORD, WILLISTON ON CONTRACTS § 1942. at p. 400(4th ed. 1998).

requirement and revert to a "but for" standard, which the Supreme Court explicitly rejected in *Holmes*. *See Holmes*, 503 U.S. at 266 n.10 (rejecting a theory of causation which "would result in infinite liability for all wrongful acts, and would 'set society on edge and fill the courts with endless litigation'") (citations omitted). Granting recovery in this situation would "give [ ] rise to the risk of 'duplicative recoveries' and 'superfluous deterrence.'" *Meng*, 116 F. Supp. 2d at 97 (quoting *American Express*, 39 F.3d at 401), as the actual victim of any RICO violations in this case appears to be the credit card company.

In sum, the Court finds that Plaintiffs have failed to allege that any of Defendants' actions have proximately caused Plaintiffs' alleged harms. In so finding, the Court determines that Plaintiffs do not have RICO standing and, accordingly, that Plaintiffs' complaint must be dismissed.

C. *Ride 11 Sanctions*

In addition, Defendants move this Court to impose sanctions against Plaintiffs pursuant to Rule 11(c) of the Federal Rules of Civil Procedure.[13] Generally, to defeat a Rule 11 motion

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[13] Rule 11(h) provides in pertinent part as follows:

> (b)By presenting to the court ... . . a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after un inquiry reasonable under the circumstances,
>
> (1) it is not being presented for any improper

a party must satisfy three elements: first, she must show that the person who signed the pleading read the document; second, that the signer made reasonable inquiry into the substance underlying the document; and third, that the signer is not acting with improper motive. *See Jarmuth v. Turetsky*, 815 F.Supp. 4, 7 (D.D.C. 1993). It is clear that as *pro se* litigants, Plaintiffs have read the offending documents; in fact, they authored them. Defendants further do not claim that the information underlying the pleadings was produced without a reasonable inquiry, in fact, as stated above, Plaintiffs go into laborious detail in their factual allegations. While the reasonableness of the Plaintiffs' inquiry is judged by an objective standard, *see generally Bus. Guides, Inc.* v. *Chromatic Communications Ent., Inc.*. 498 U.S. 533 (1991), Plaintiffs appear have made a sufficient inquiry. The Court, however, cannot dispose of the third element quite as quickly.

While improper motive is nominally an inquiry into the subjective state of mind of the defendant, bad faith may be inferred from the complete lack of merit of the pleadings. *See In re 60 East 80th Street Equities, Inc.*, 218 F.3d 109, 116 (2d Cir. 2000). Many of Plaintiffs' claims stray far from the field of reasonableness. For instance, Plaintiffs include a claim that Defendants failed to register

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harass or to cause unnecessary delay or needless increase in the cost of litigation. Fed. R. Civ. P. 11(c). Rule 11(c) permits, but does not require, the court to provide sanctions for a violation of 11(b).

as a subversive organization. Causes of action like this one demonstrate a lack of merit, as there is no private cause of action for another person failing to register in an organization. Notably, Plaintiffs also lace their complaint with racist innuendoes and conclusory statements.

District courts exercise discretion in resolving motions for sanctions pursuant to Rule 11(b)(1). *See* Fed. R. Civ. P. 11(c) ("If... the court determines that subdivision (b) has been violated, the court *may* ... impose on appropriate Sanction.") (emphasis added). In this Court's opinion, sanctions in this case are unwarranted. While Plaintiffs' conduct approaches a violation of Rule 11, in this case it appears that Plaintiffs did believe that their complaint was warranted. Defendants' argument that Plaintiffs were on notice of their erroneous legal arguments after the voluntary dismissal in Maryland is unavailing. Under Defendant's theory, Plaintiffs who voluntarily dismiss pursuant to Rule 40(b) necessarily run a risk of a Rule 11 violation merely by re-filing and losing in another court. According to Defendants, this would indicate a complete lack of merit. Such a rule is overinclusive in that it would deter parties from re-filing otherwise meritorious claims. Moreover. Defendants have not demonstrated that Plaintiffs possess an improper purpose or motive in bringing this action. Absent such a showing, the Court in this case denies Defendants' motion for Rule 11 sanctions.

III. CONCLUSION

For the foregoing reasons, the Court finds that Plaintiffs have failed to allege any causes of action upon which relief may be granted. Plaintiffs have not alleged criminal violations for which they have standing. Further, Plaintiffs have not alleged that any of Defendants' actions proximately caused Plaintiffs' alleged harms. Consequently, Defendants' Motion for Dismissal for Failure to State a Claim shall be granted. However, because Defendants have not shown that Plaintiffs acted in actual bad faith, Defendants' request for Rule 11 sanctions shall be denied. An appropriate Order accompanies this Memorandum Opinion.

February 12 , 2001

S/ Colleen Kollar-Kotelly
COLLEEN KOLLAR-KOTELLY
United States District Judge

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(Dept. of Just. Logo) **U.S. Department of Justice**
Criminal Division

Washington, D.C. 20530-0001

May 15, 2001

Mr. Samuel K. Jacobs
1155 Connecticut Avenue NW, Suite 300
Washington, DC 20036

Dear Mr. Jacobs:

Thank you for your letter to the Attorney General. He has asked me to respond to you on his behalf regarding your concern about a decision issued by a federal court.

The Department of justice does not have the authority to review a court's decision. If you believe the decision is inappropriate, it may be challenged through the court's established procedures. You may wish to seek the advice of private counsel or guidance from your local legal aid organization regarding these procedures.

Thank you for writing to the Attorney General.

Sincerely,
s/Gwendolyn L. Turner
Gwendolyn L. Turner
Executive Office

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CASE NUMBER: 1:00CV231

SAMUEL K. JACOBS, et al, PLAINTIFFS, vs. SUSAN WU, et al DEFENDANTS.	NOTICE OF APPEAL

NOTICE OF APPEAL

Notice is hereby given that the Plaintiffs, Samuel K. Jacobs and Nancy Heckerman, in the above named case hereby appeal to the United States Court of Appeals for the District of Columbia pursuant to Rule 4 (a) of the Federal Rules of Appellant Procedure and Rule 60 (b) of the Federal Rules of Civil Procedure from the Order issued on December 5, 2000, referred to as 'Exhibit A,' and the 'Order Denying Petition of Writ' issued on June 14, 2000, referred to 'Exhibit B,' by the Honorable Judge Colleen Kollar-Kotelly. True and correct copies of these Orders are

attached to this notice as 'Exhibit A' and 'Exhibit B' and incorporated by reference herein.[1]

That said orders are a "fraud upon the court"[2] and misconduct pursuant to Rule 60 (b) of

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[1] Normally, filing of timely and sufficient notice of appeal immediately transfers jurisdiction as to any matters involved in appeal from district court to court of appeals; once proper appeal is taken, district court may generally take action only in aid of appeal or to correct clerical errors. Leonhard v. U. S., C.A.N.Y.1980, 633 F.2d 599, certiorari denied 101 S.Ct. 1975, 451 U.S. 908, 68 L.Ed.2d 295.

[2] "Fraud upon the court" within this rule is fraud which defiles the court itself, or is fraud which is perpetrated by officials of the court in such manner that the judicial machinery cannot proceed in the regular manner to adjudicate cases. Armour & Co. v. Nard, D.C. Iowa 1972, 56 F.R.D. 610.

"Fraud upon the court" such as may warrant relief from judgment embraces only that species of fraud which does, or attempts to, defile the court itself, or is fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases. Kupferman v. Consolidated Research & Mfg. Corp., D.C.N.Y.1971, 53 F.R.D. 387, affirmed 459 F.2d 1072. See, also, Williams v. Board of Regents of University System of Georgia, D.C.Ga.1981, 90 F.R.D. 140; Porcelli v. Joseph Schlitz Brewing Co., D.C. Wia.1978, 78 F.R.D. 499, affirmed 588 F.2d 838.

Fraud upon the court confers equitable jurisdiction on a court to set aside a judgment where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where the attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney corruptly sells out his client's interest to the other side. Luttrell v. U. S., C.A.Or. 1980, 644 F.2d 1274.

the Federal Rules of Civil Procedure because Judge Colleen Kollar-Kotelly has failed to recuse in herself from this case as evidenced by her Order of June 14, 2000.[3] Plaintiffs requested in their 'Plaintiffs' Petition of Writ for a Change of Judge' submitted on May 5, 2000,[4] that she adhere to the statute laws of Title 28 U.S.C. § 144 (Bias and prejudice of judge), § 372 (Retirement for disability; substitute judge on failure to retire; judicial discipline), and § 455 (Disqualification of justice, judge, or magistrate) and disqualify herself from this case for bias and prejudice which she has failed to do.[5]

That the intent of Congress in enacting the aforementioned laws, Title 28 U.S.C.A. § 144, § 372, and § 455, was to assure the Citizens that a judge cannot refuse to recuse herself when there

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[3] Unlike motion allowing court to grant relief to patty where an act of fraud, either intrinsic or extrinsic, misrepresentation or other misconduct of adverse party has been committed, motion for fraud upon the court is not bound by one-year limitation for filing. Williams v. Board of Regents of University System of Georgia, D.C.Ga.1981, 90 F.R.D. 140.

[4] If district court judge, in vacating order dismissing action, acted without any basis in law, disregarding limitations placed upon his power to vacate, he lacked jurisdiction to act and his vacation order would be appealable, and accordingly, question of court of appeals' jurisdiction to act on plaintiff's appeal from vacation order was necessarily included in question of validity of lower court proceeding which resulted in the vacation. Rinieri v. News Syndicate Co., C.A.N.Y.1967, 385 F.2d 818.

[5] Fraud upon the court renders a judgment void and, therefore, is subject to collateral attack in any court where its validity is an issue. Graciette v Star Guidance, Inc., D.C.N.Y.1975, 66 F.R.D.

is "fraud upon the court" administered by officers of the court.

That Judge Colleen Kollar-Kotelly has combined this case with another case with her Order issued on March 14, 2000, referred to as 'Exhibit C', in *Samuel K. Jacobs, et al, v. The American Express Company, Inc., et al,* Case Number 1:99CV2809, of this same Court. The case that Judge Kollar-Kotelly referred to in that Order as "*a Complaint numbering 129 pages with 25 attached exhibits*" was this case.[6] A true and correct copy of the Order issued in the American Express case is attached to this notice as 'Exhibit C' and incorporated by reference herein

That the Plaintiffs' complaints had been relegated to the same Court pursuant to Local Civil Rule 40.5 since they filed as *pro se* complainants in both cases. This rule is a discrimination against *pro se* litigants in general. This rule directly denies equal protection of the laws to the Citizens pursuant to Amendment XIV of the Constitution of the United States.

That because of this Local Civil Rule 40.5 Judge Colleen Kollar-Kotelly knew that there were no other cases filed by the Plaintiffs since she would have had record of all of them in her Court, she purposely directed the Defendants in The

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6 Within this rule, fraud is "extrinsic" when a party is prevented from fairly presenting his claim, his defense or his evidence by reason of a trick, artifice or other fraudulent conduct; perjury is not traditionally considered "extrinsic fraud". Armour & Co. v. Nard, D.C. Iowa 1972, 56 F.R.D. 610.

American Express case to conspire with the Defendants in this case to deny the Plaintiffs their due process of the laws pursuant to Amendment V and Amendment XIV of the Constitution of the United States.[7]

That Judge Colleen Kollar-Kotelly, by instigating this conspiracy with bias and prejudice, purposely denied the Plaintiffs their right to equal protection of the laws pursuant to Amendment XIV of the Constitution of the United States.

That the Plaintiffs are entitled to all Privileges and Immunities of Citizens in several States, and Judge Colleen Kollar-Kotelly, with the Defendants in this case and the Defendants in *The American Express Company, Inc., et al,* has denied the Plaintiffs these constitutional rights

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[7] To justify setting aside a judgment on ground of fraud or misconduct, the acts or conduct of the adverse party must be such as prevented the losing party from fully and fairly presenting his case. Gilmour v. Strescon Industries, Inc., D.C.Pa. 1975, 66 F.R.D. 146, affirmed 521 F.2d 1398.

Judgment is "void" within this rule, if court rendering judgment acted in a manner inconsistent with due process. Sonus Corp, v. Matsushita Elec. Industrial Co., Ltd., D.C.Mass1974, 61 F.R.D. 644.

For judgment to be void, it must be detertmined that rendering court was powerless to enter it; if found at all, voidness usually arises for lack of subject matter jurisdiction or jurisdiction over the parties, but it may arise if court's action involves plain usurpation of power or if court has acted in manner inconsistent with due process of law. V. T. A., Inc. v. AIRCO, Inc., C.A.Colo. 1979, 597 F.2d 220.

through a conspiracy of bias and prejudice in violation of Article IV, Section 2, of the Constitution of the United States.

That Judge Colleen Kollar-Kotelly with the Defendants in this case and the Defendants in *The American Express Company, Inc., et al,* have searched and seized the Plaintiffs' constitutional rights for due process of the laws, equal protection of the laws, and the right to trial by jury without issuance of a Warrant supported by Oath or affirmation in violation of Amendment IV of the Constitution of the United States.

That by conspiring to combine these two cases together, denying the Plaintiffs their constitutional rights through bias and prejudice, Judge Colleen Kollar-Kotelly has violated, and has caused others to violate, Title 18 U.S.C.A. § 241 (Conspiracy against rights) and § 242 (Deprivation of rights under color of law).

That by forming this conspiracy, Judge Colleen Kollar-Kotelly has violated, and caused others to violate with her, Title 18 U.S.C.A. § 371 (Conspiracy to commit offense or to defraud United States) by denying Citizens of the United States their constitutional rights thus defrauding the United States through the her actions while under the color of the law through the force of a Court of the United States.

That by forming this conspiracy through bias and prejudice and violating these criminal statutes under color of the law, Judge Colleen

Kollar-Kotelly has denied the Plaintiffs their constitutional and civil rights pursuant to Title 28 U.S.C.A. § 1343 (Civil rights and elective franchise), and Title 42 U.S.C.A. § 1985 (Conspiracy to interfere with civil rights): (2) (obstructing justice; intimidating party, witness, or juror) and (3) Depriving person of rights or privileges).

That the Plaintiffs filed a 'Petition of Writ for a Change of Judge' pursuant to Title 28 U.S.C. § 144 (Bias and prejudice of judge), § 372 (Retirement for disability; substitute judge on failure to retire; judicial discipline), and § 455 (Disqualification of justice, judge, or magistrate) in both of these cases, and Judge Colleen Kollar-Kotelly has refused to disqualify herself pursuant to these laws as enacted by Congress by continuing to issue fraudulent orders denying the Plaintiffs their rights to due process of law and equal protection of the laws.

That by delaying, hindering, and preventing said aforementioned Acts of Congress from being executed, and by refusing to recuse herself from this case, Judge Colleen Kollar-Kotelly has questioned the intent of Congress and challenged the constitutionality of these laws in violation of her Oath of office.

That Rule 60 of the Federal Rules of Civil Procedure is a law which was submitted by the Supreme Court of the United States to the Congress and enacted by the Congress pursuant to Amendment V and Amendment XIV of the

Constitution which guarantee due process of the laws and equal protection of the laws. Rule 60(b) is a fundamental law to prevent "fraud upon the court" where it can be determined that there is a denial of these rights.

That when Rule 60 (b) of the Federal Rules of Civil Procedure is combined with Rule 4(a) of the Federal Rules of Appellate Procedure, the Plaintiffs have standing to have this appeal granted as a right by this Honorable Court of Appeals, especially when the constitutional rights are violated through the conspiracy of bias and prejudice.

That the Order of March 14, 2000, is a "fraud upon the court" because it combined two separate and unrelated cases together for no other reason than to form a conspiracy to deny the Plaintiffs their Constitutional rights to due process of the law, equal protection of the laws, and the right to trial by jury. This fraud upon the court is appealable for up to a year[8] because it formed a conspiracy in violation of the criminal laws of Title 18 U.S.C.A. § 241, § 242 and § 371 under color of the law.

That these orders were issued through fraud and misconduct of a judge in violation of the Oath of office administered to officers of the

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[8] Motion to reopen judgment on ground of fraud, misrepresentation or other misconduct of adverse party must be entered not more than one year after judgment was entered. Prickett v. Duke Power Co., D.C.S.C.1970, 49 F.R.D. 116, affirmed 429 F.2d 984.

Court to uphold the Constitution and the laws enacted by the Congress thereupon. Failure to adhere to the judicial Oath of office is a violation of Article VI, paragraphs 2 and 3, of the Constitution of the United States, [9] and Title 28 U.S.C.A. § 453 (Oaths of justices and judges).

That the Defendants in *Samuel K. Jacobs, et al, v. The American Express Company, Inc., et al,* now Appellees in the Court of Appeals Case Number 00-7254, having conspired with those parties in this case who are alleged to have committed treason against the United States are as much parties to this complaint on treason as if they were present at the conception of the crime since there are no accessories to the act of treason, only principals.

That evidence in the form of a document, referred to as 'Exhibit D,' of the cases being combined was submitted at a settlement conference with Magistrate John M. Facciola on

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[9] Article VI: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the Several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall aver be required as a Qualification to any Office or public Trust under the United States.

April 19, 2000. A true and correct copy of this document is attached to this notice as 'Exhibit D' and incorporated by reference herein.

That 'Exhibit D,' a demand payment presented at that meeting on April 19, 2000, to the Plaintiffs by the attorneys[10] for *The American Express Company, et al,* for the debts incurred by the Defendants in this *Susan Wu, et al,* case, demonstrates with definitive evidence that not only has *The American Express Company, et al,* given Aid and Comfort to the enemies of the United States by financing their activities, they have knowingly given this Aid and Comfort since they have conspired together with the knowledge of the basis for these two lawsuits.

That the basis of this case against *Susan Wu, et al,* is of alleged overt acts of treason against the United States of America committed through multiple RICO predicate and overt acts. Judge Colleen Kollar-Kotelly has defiled this case with "fraud upon the court"[11] by failing to move

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[10] An attorney's loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court, and when he departs from that standard, he perpetrates a "fraud upon the court" within savings clause of subd. (b) of this rule governing relief from judgment or order. Kupferman v. Consolidated Research and Mfg. Corp., C.A.N.Y. 1972, 459 F.2d 1072.

[11] "Fraud upon the court" is special kind of fraud more serious in scope and implications than fraud sufficient for relief under this rule or as ground for "independent actions." Dankese Engineering, Inc., v Ionics, Inc., D.C.Mass.1981, 89 F.R.D. 154.

forward with a jury trial; [12] has prevented, hindered and delayed the Plaintiffs from fully exhibiting their case and their evidence to a Court of the United States;[13] and has formed a conspiracy to perpetuate constructive and direct treason upon the United States which is a

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[12] Fraud is regarded as extrinsic or collateral for purposes of setting aside a judgment on that basis where it prevents a party from having a trial or from presenting a cause of action or defense, or induces him to withdraw a defense, or operates upon matters pertaining not to the judgment itself but to the manner in which it was procured. *U. S. v. Rexnch,* D.C.Puerto Rico 1966,41 F.R.D. 180.

Relief from judgment on account of fraud will be granted in case in which, by fraud or deception practiced on the unsuccessful party, he was prevented from exhibiting fully his case, by reason of which there never was a real contest before the court on the subject matter of the suit. Id.

[13] Judgment may be set aside only where fraud is extrinsic or collateral to the matters involved in the action; in order to be considered extrinsic fraud, alleged fraud must be it prevents party from having opportunity to present his claim or defense in court or deprives party of his right to a day in court. *Green v. Ancora-Citronelle Corp.,* C.A.CaL 1973, 577 F.2d 1380.

In order to warrant setting aside a final judgment for fraud, misrepresentation or other misconduct of an adverse party, the conduct complained of must be such as prevented the losing party from fully and fairly presenting his case or defense. *Rozier v. Ford Motor Co.,* C.A.Ga.1978, 573 F.2d 1332, rehearing denied 578 F.2d 871.

Before a decree may be set aside for fraud, whether extrinsic or intrinsic, it must appear that such fraud prevented complaining party from making a full and fair defense. *Rubens v. Ellis,* C.A.Tex. 1953, 202 F.2d 415. See, also, *Keys v. Dunbar,* C.A.Cal.1969, 405 F.2d 955, certiorari denied 90 S.Ct. 158, 396 U.S. 830, 24 LEd.2d 138; *Assmann v. Fleming,* C.C.A.Neb.1947, 159 F.2d 332.

violation of Title 18 U.S.C.A. § 2382 (Misprision of treason).

That Title 18 U.S.C.A. § 2382 is an Act of Congress directly pursuant to Article III, Section 3, of the Constitution of the United States.

That said actions to deny the Plaintiffs their constitutional rights through formation of a conspiracy to obstruct justice though force of judicial authority by Judge Colleen Kollar-Kotelly advocate the overthrow of a constitutional form of Government in violation of Title 5 U.S.C.A. § 7311 (Loyalty and Striking) and Title 18 U.S.C.A. § 1918 (Disloyalty and asserting the right to strike against the Government).

WHEREFORE, these Plaintiffs pray that this appeal be granted as a right pursuant to Rule 60(b) of the Federal Rules of Civil Procedure in conjunction with Rule 4 (a) of the Federal Rules of Appellate Procedure for the cause and reasons stated herein;

That this appeal be entered from each and every part of said orders, papers, and pleadings as exhibited from the records of this case, the whole thereof;

That the Plaintiffs intend to bring up for review on said appeal the findings of fact and conclusions of law as found which the court has refused to admit as findings of fact and conclusions of law as requested by the Plaintiffs;

That this case be combined with *Samuel K. Jacobs, et al, v. The American Express Company, Inc., et al,* Case Number 00-7254, in the United States Court of Appeals for the District of Columbia, as it has already been joined in the Court below; and,

WHEREFORE, the Plaintiffs pray that a copy of this Notice of Appeal be forwarded to the Honorable Janet Reno, Attorney General of the United States, pursuant to Rule 44 (Case Involving a Constitutional Question When the United States Is Not a Party) of the Federal Rules of Appellate Procedure and Title 28 U.S.C.A. § 2403 (Intervention by United States or a State; constitutional question) of the Federal Rules of Civil Procedure in order that it be reviewed for its constitutional questions.

Dated this 4th day of January, 2001.

Respectfully submitted,

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Samuel K. Jacobs

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IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

SAMUEL K. JACOBS, et al, APPELLANTS, v. SUSAN WU, et al, APPELLEES.	CASE NO. 01-7007 APPELLANTS' ANSWER TO SHOW CAUSE ORDER FOR JURISDICTION AND RULE 44 REQUEST

APPELLANTS' ANSWER TO SHOW CAUSE ORDER FOR JURISDICTION AND RULE 44 REQUEST

COMES NOW Samuel K. Jacobs and Nancy Heckerman, Appellants in the above stated cause, who hereby submit this answer to the Honorable Court of Appeal's Order of January 22, 2001, to show cause as to why this appeal should not be dismissed for lack of jurisdiction. Therefore, Appellants will prove personal jurisdiction, subject jurisdiction, and District of Columbia special jurisdiction pursuant to the following findings:

STATEMENT OF FACT

1. That Appellants stated in their Notice of Appeal filed on January 4, 2001, that the filing of the notice was based on several issues all of which involved the fact that through an Order issued in the lower Court on March 14, 2000, Judge Colleen Kollar-Kotelly joined a 'Complaint Under Racketeering Influenced Criminal Organization Act (RICO),' *Samuel K. Jacobs, et al, v. The American Express Company, Inc., et al,* Case Number 1:00CV2809, (hereafter referred to as 'American Express'), with the lower court case for this appeal, *Samuel K. Jacobs, et al, v. Susan Wu, et al,* Case Number 1:00CV231, (hereafter referred to as 'Susan Wu'). (A copy of this Order was attached as 'Exhibit C' to the Notice of Appeal filed in this case on January 4, 2001.) The combining of these two cases resulted in the following events which have lead to violations of the Appellants' Constitutional rights and civil rights, and disregard for the laws of the United States as enacted by the Congress.

2. That previous to that Order, the Court had furnished a copy of an order discrediting and dismissing another RICO case because the plaintiff was a *pro se.*[1] The copy of this order was attached to the very first filing for an extension of time by the attorneys for the 'American Express' who are now in conspiracy with 'Susan Wu.' At this time the attorneys are representing themselves as *pro se* Defendants, so

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[1] See 1 Chit. Cr. Law, 696. Judges not to give their opinion prematurely.

what could have been the logic for submitting a copy of this other *pro se* case except to exert intimidation and fear to the Appellants through the Court ? This Court followed the definition under English law in the dictionary written by John Bouvier, which states that liberty is the: *"Privilege held by grant or prescription by which some men enjoy greater benefit than ordinary subjects. . ."*

3. That in a settlement conference for 'American Express' before Magistrate John M. Facciola on April 19, 2000, the attorneys for 'American Express' submitted a "bill" to the Appellants for the debts incurred by the Appellees in 'Susan Wu.' This was the initial confirmation of the conspiracy formed by the Order of March 14, 2000, which united the Appellees in both cases.

4. That Appellants requested that Judge Colleen Kollar-Kotelly recuse herself from these two cases pursuant to Title 28 U.S.C.A. § 144, § 372, and § 455 in their 'Petition of Writ For A Change of Judge' which was filed in 'Susan Wu' on May 5, 2000, and in 'American Express' at the same time. Under Rule 60 (b) of the Federal Rules of Civil Procedure, the action of combining these two cases taken by Judge Kollar-Kotelly is a "fraud upon the court." [2]

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[2] Mr. Key and Mr. Swann, contra, took nearly the same ground as in the former cases. They contended that the charge is not for misfeasance, or nonfeasance in office. His official station only furnished him the means of perpetrating the fraud. The offence would have been the same if he had not been in office. This is as much a common-law offence as

5. That a libelous and defamatory newspaper article was an exhibit in the 'Answer to the Amended Complaint' and 'Counterclaims' submitted by the 'American Express' on May 26, 2000, and was the result of an exchange between the conspiring parties in these cases, and, thus, is extremely relevant to this case since Appellants believe that it was Susan Wu who supplied this article to attorneys for 'American Express.' The article was meant, in both of these cases, to threaten and intimidate the Appellants into a rather perverted submission of guilt, but it failed because the Appellants are anxious to defend those libelous accusations in this Court.

6. That the Appellants assert that the reporter who wrote the articles was either paid a bribe or received favors to write the libelous and defamatory articles to assist with antitrust violations and other criminal acts instigated by competitor Florida Express Airline against a newly formed airline. I.M.C. (International Machine Corporation) was the major stock holder of Florida Express Airline. At the time that Florida Express started the airline its common stock was valued at ten cents or less. When Jacobs started the new airline, Florida Express stocks had risen to two dollars. The officers of Appellant's would be airline and Florida Express Airline executives used the local newspaper and

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if one of the high officers of the government should commit murder, or larceny, or assault and battery. The averment of his official character was only to show how the deceit was effected. *U. S. v. WATKINS*, 28 Fed.Cas.No. 16,649, at page 463.

other improper sources to defame the airline thus making it impossible to start the operation. As the Appellant's airline started to disintegrate, I.M.C. made over eighty million dollars in stock profits which had by then peaked at fourteen dollars a share due to the demise of Appellant Jacob's competitive venture. The newspaper articles were baseless, improper, fraudulent, and were without merit.

7. That since the Appellees in both cases are contacting and using the people quoted in those articles to continue their RICO activities through this Court, the newspaper reporter, his editor, the newspaper, and the people who supplied the libelous information will be brought forward and added to this combined case to prove that the overt acts are not only complete, they are continuous in this treason and RICO case. Appellant Samuel K. Jacobs is not a politician or public figure, and, therefore, the newspaper is liable under the First and Fourth Amendments of the Constitution for this defamation of character and libel.

8. That several of the people mentioned in those articles, and others not mentioned in either complaint who have joined the conspiracy, have recently admitted that they have been contacted by Appellees in 'American Express' and/or 'Susan Wu' and encouraged to commit further racketeering activities in furtherance of this conspiracy's cause. A Federal employee who has recently joined this conspiracy has attempted to extort money through harassment and

intimidation from a third party at his work by using Government facilities and letterheads. Appellants have requested an investigation of this Federal employee by the Government agency for which he works, and the F.B.I. Those actions of extortion, harassment, and intimidation have not only threatened the livelihood of said third party, they have threatened his life as well.

9. That this case is going to be well publicized in the end because the Appellees have extended their range of criminal activities to Florida and Texas in addition to the other areas of the country already stated. Parties in those states have acquired assistance of relatives and friends who are employed as U.S. Treasury Customs agents and Secret Service agents to obtain felonious information through government facilities for personal use.

10. That the Appellants are prepared to defeat any other questionable maneuvers by the Appellees since the Appellees in neither of these two cases, which are now combined by overt and predicate acts under direction of this Court, have never really researched the facts in those newspaper articles, nor what has happened in other courts in regard to those libelous accusations. Appellants are desirous to bring a finality to all of these libelous and defamatory charges, and these trials by newspaper.

11. That the Order issued on March 14, 2000, and the overt and predicate acts resulting from the formation of that conspiracy have

caused the conspiracy to grow, and have violated the Appellants' following Constitutional rights, civil rights, and laws as enacted by Congress:

a. This delay of the trial for these cases by Judge Colleen Kollar-Kotelly has caused a denial of Appellants' rights of due process of law pursuant to Amendment V and XIV of the Constitution of the United States, and a denial of equal protection of laws pursuant to Amendment XIV of the Constitution by not having a speedy and fair trial which has contributed to the expansion of this conspiracy;

b. This delay by Judge Colleen Kollar-Kotelly is an obstruction of justice pursuant to Title 18 U.S.C.A. § 1503 (Influencing or injuring officer or juror generally) which is a predicate act of RICO violations as defined by Title 18 U.S.C.A. § 1961 (1) (Definitions);

c. This conspiracy formed by Judge Kollar-Kotelly is a violation of Title 18 U.S.C.A. § 241 (Conspiracy against rights);

d. This conspiracy formed by Judge Kollar-Kotelly is a violation of Title 18 U.S.C.A. § 242 (Deprivation of rights under color of law);

e. This conspiracy formed by Judge Kollar-Kotelly is a violation of Title 18 U.S.C.A. Title 18 U.S.C.A. § 371 (Conspiracy to commit offense or to defraud United States);

f. This conspiracy formed by Judge Kollar-Kotelly is a violation of Title 28 U.S.C.A. § 1343 (Civil rights and elective franchise), and Title 42 U.S.C.A. § 1985 (Conspiracy to interfere with civil rights); (2) (obstructing justice; intimidating party, witness, or juror) and (3) (Depriving person of rights or privileges);

g. This denial of the Appellants' Constitutional rights due to this conspiracy formed by Judge Kollar-Kotelly is a violation of her Oath to uphold the Constitution of the United States pursuant to Title 28 U.S.C.A. § 453 (Oaths of justices and judges);

h. That because of the violation of the Constitutional rights and Title 28 U.S.C.A. § 453 (Oaths of justices and judges), this conspiracy formed by Judge Kollar-Kotelly advocates a disloyalty to the Government of the United States by a Federal officer in violation of Title 5 U.S.C.A. § 7311 (Loyalty and striking) and Title 18 U.S.C.A. § 1918 (Disloyalty and asserting the right to strike against the government);

i. That all of these overt actions instigated by the formation of this conspiracy by Judge Kollar-Kotelly are a direct violation of Article III, Section 3, of the Constitution of the United States, Title 18 U.S.C.A. § 2382 (Misprision of treason), and Title 18 U.S.C.A. § 2384 (Seditious conspiracy) since this judge had knowledge of the crimes of treason in this case and has failed to allow the disclosure of this knowledge and information which is also a

denial of due process of the law and equal protection of the laws; and,

j. That because of the Local Civil Rule 40.5 which dictates that all cases filed by a *pro se* litigant must be sent to the same judge, the direct result of this Rule is the denial of the Appellants' Constitutional and civil rights. If these cases had not been assigned to the same judge, then the likelihood of this conspiracy would have been far more remote. **This rule is unconstitutional and should be repealed from both the civil and criminal Local Rules, and that is a constitutional question pursuant to Rule 44 (Case Involving a Constitutional Question When the United States Is Not a Party) of the Rules of Appellate Procedure, and Title 28 U.S.C.A. § 2403 (Intervention by United States or a State; constitutional question).**

SUBJECT JURISDICTION

12. That these overt acts of treason against the United States were conducted through the commission of the predicate acts of RICO as enumerated in the Appellants' Complaint by citizens of the United States who are still loyal to the country of their birth.[3]

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[3] It has been said that treason can be committed by one who scrupulously observes the laws of other nations.— *Tomoya Kawakita v. U.S.*, Cal, 72 S.Ct. 950, 343 U.S. 717, 96 L.Ed. 1249, rehearing denied 73 S.Ct. 5, 344 U.S. 850, 97 L.Ed. 660

13. That the crimes so alleged in the 'Complaint for Treason Under Racketeering Influenced Organization Act (RICO)' filed on February 9, 2000, were consummated and committed within the District of Columbia with the delivery of computers to the Department of the Treasury, the Federal Bureau of Investigation, the Department of Justice, and other Federal agencies within the District by the Appellees who are citizens of the United States, and by acts of others who were and are sojourners within the United States. The Department of the Navy also received computers in Virginia as well as the National Institute of Standards Testing in Maryland.

14. That Appellants have maintained that the components for these computers are directly and indirectly supplied by the Peoples' Republic of China through companies owned by the Appellees and the Chinese Military. Appellants maintain that these components contain devices that obtain, communicate, gather, transmit, transfer, and deliver information to representatives and then are sent to aid the Peoples' Republic of China. These actions are a violation of Title 18 U.S.C.A. § 793 (Gathering, transmitting, or losing defense information) and Title 18 U.S.C.A. § 794 (Gathering or delivering defense information to aid foreign government). That these crimes are specified unlawful activities (SUA) as defined under Title 18 U.S.C.A. § 1956 (c) (7) (D) (Laundering of monetary instruments) which is a definition under Title 18 U.S.C.A. § 1961(1).

15. That Appellants further maintain that these companies owned in conjunction with the Communist Chinese Government are not declared to any United States Government agency by the Appellees in this country who are United States citizens.

16. That the Appellees in 'Susan Wu,' by their own volition, admitted that they were being investigated for espionage and treason by the Federal Bureau of Investigation before the Appellants met them concerning the delivery of computers to the Chinese embassy. Everything instigated during either of these proceedings is now combined under Title 18 U.S.C.A. § 2381 (Treason), and all parties are principals since there are no accessories in treason.

17. That during the course of the Appellants' relationship with Appellee Susan Wu and her coconspirators, plans were stolen for military aircraft from various defense plants, the title blocks were changed, and the drawings were smuggled out of the country as "architectural drawings" by the husband of the daughter of Wan Li, third highest ranking Communist party member in Beijing, China.[4] This daughter of Wan Li, and her husband, are the closest of friends

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[4] Treason, being a breach of allegiance, (*U.S. v. Greiner*, 26 F.Cas.No. 15,262, 4 Phila. (Pa.) 396), it can be committed against a government only by one who owes allegiance, either perpetual or temporary thereto. However, aliens domiciled in this country may commit the offense against this government since they owe a temporary allegiance to it their sojourn here. (*U.S. v. Burr*, 25 F.Cas.No. 14,692b).

with Susan Wu, and, in fact, the husband lived here in the United States with Susan Wu while "attending" architectural school in this country, and afterwards while setting up an architectural firm in order to transfer American defense and technology documents back to China.

18. That at the time of these incidents, Appellant Jacobs complained to the F.B.I. in San Francisco about this problem and they told him that they had only three agents who spoke Mandarin, and that the Chinese problem was so big that they could not attend to all of the situations since there were more Chinese agents in this country now than Russian agents during the cold war stealing our defense plans and technology. Now the F.B.I. is very anxious to take actions against these Chinese agents and traitors.

19. **That it took the Appellants five years to obtain all the other information about these activities of espionage and treason, and this Court now questions its jurisdiction for holding a trial for treasonous activities against the United States.** Under Title 18 U.S.C.A. § 2381, § 2382, § 2384, and § 2385, no United States District Court has the right to deny a trial for treason from being conducted;[5] no right to deny the Appellees a right to a trial by jury; no right to alter, abrogate, prevent, hinder, or delay

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[5] The constitutional requirement that there be two witnesses to the overt act is not applicable to preliminary proceedings before a magistrate or grand jury. *U. S. v. Greiner,* 26 P.Cas.No. 15,262, 4 Phila. (Pa.) 398; *In re Charge to Grand Jury,* 30 F.Cas.No. 18,276, 2 Wall.Jr. 134.

any of the enacted laws of the United States from being executed in the pursuance of these actions; and, no right to exclude any of those parties whose objective it is to give aid and comfort to those who have committed, and are still committing, these acts of treason against the United States.

20. That Appellants stated in their 'Notice of Appeal' for both 'American Express' and 'Susan Wu' that Judge Colleen Kollar-Kotelly had indeed prevented, hindered, and delayed the execution of the laws as enacted by Congress by refusing to recuse herself from these cases when she formed the conspiracy which enlarged the number of parties contributing to these treasonous activities through RICO activities. Appellees in 'American Express' have not only joined this treasonous conspiracy, they have given aid and comfort to those who are injuring the United States to the advantage of a foreign nation, and there does not have to be a full scale war when these objectives are completed. 'American Express' has even financed these traitorous activities as evidenced by the "bill" submitted to the Appellants through the Court on April 19, 2000, after they knew that the parties who were named on the "bill" had been accused of these crimes as evidenced by their exchange of information through this conspiracy.

21. That no party in these crimes has a way out of the charges of treason since the knowledge of the traitorous crimes makes a claim of innocence of these events an illusion.

The courts have been hesitant to recognize defenses to the crime of treason, it being held that the only defense allowable is duress or compulsion, and that only when the fear produced is that of immediate death,[6] and that accused joined the enemy only with the intent to escape as soon as possible.[7]

22. This statement is not an opinion; it is a fact as demonstrated in previous cases of treason. A publicly traded company, The American Express Company, Inc., has engaged in the acts of treason and espionage against the United States, and this will be of great concern to the Securities Exchange Commission.

THEREFORE, for the reasons stated above, the subject jurisdiction is treason through a pattern of racketeering activities, and is expanded upon with these new crimes that are continuous patterns of racketeering activities pursuant to the previous claims and allegations filed in the Complaint filed on February 9, 2000.

PERSONAL JURISDICITON

23. That Appellants state that the Court of Judge Colleen Kollar-Kotelly has failed to grant a trial for this case so that the testimony of two

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[6] *U. S. v. Hodges*, 26 F.Cas.No. 15, 374, Brunn.Col.Cas. 465, 2 Wheel. Cr. (N.Y.) 477; *Respublica v. McCarty*, 2 Dall. (Pa.) 86, 1 L.Ed. 300.

[7] *U. S. v. Greiner*, supra at 396; *Respublica v. McCarty*, supra.

witnesses can be submitted in a jury trial pursuant to Article III, Section 3, of the Constitution of the United States. Judge Kollar-Kotelly has failed through bias and prejudice[8] to hold a speedy and just trial for those alleged to have committed treason against the United States for more than a year. By denying this trial, Judge Colleen Kollar-Kotelly has attempted to conceal the knowledge of the commission of this crime which is misprision of treason in violation of Title 18 U.S.C.A. § 2382 (Misprision of treason).[9]

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[8] Such a commitment of the opinion of the court, upon points which may arise in a subsequent stage of the prosecution, we consider (to use the language of the chief justice of the United States) to be "manifestly improper." Upon this subject Lord Coke, in his 3d Inst. p. 29, has the following observations: "And to the end that the trial may be more indifferent, seeing that the safety of the prisoner consisteth in the indifferency of the court, the Judges ought not to deliver their opinion beforehand, of any criminal case that may come before them judicially." "And therefore the judges ought not to deliver their opinions beforehand upon a case put and proofs urged on one aide, in the absence of the party accused." "For how can they be indifferent, who have delivered their opinions beforehand without hearing of the party, when a small addition or subtraction may alter the case? And how doth it stand with their oath who are sworn that they should well and lawfully serve our lord the king and his people, in the office of a justice, and that they should do equal law and execution of right to all his subjects?" And again, in the next page he says: "The king's learned counsel should not, in the absence of the party accused, upon any case put, or matter showed by them, privately preoccupate the opinion of the Judges." *U.S. v. Watkins*, 28 F.Cas.No. 16,649, at Page 451.

[9] Treason may consist of a single act or of a course conduct. *U.S. v. Chandler*, C.A. Mass., 171 F.2d 921, certiorari denied 69 S.Ct. 640, 336 U.S. 918, 93 L.Ed. 1081,

24. That Appellants extended to Judge Colleen Kollar-Kotelly the way out of this quagmire by stating the facts of these cases in the 'Notices of Appeal' without actually defining the details of the crimes committed by her; but this order from the Court of Appeals for a show cause order for jurisdiction commands the Appellants to expand upon these grounds, and thus, what was a veiled suggestion has now become a demand for a detailed explanation which will damage the Court more than was intended or necessary. It was the Appellees that the Appellants filed the Complaint against, not the judge; but with this show cause order the Appellants are forced to openly accuse the judge.

25. That these Appellees were, are, and will continue to be agents of the Chinese government, and their intent always has been to aid that foreign government to the injury of the United States. All the law requires is that the agents engage in operations that aid another government to the injury of the United States.

26. That information to indict these agents for the crime of treason does not have to be given in an open court before the case can be brought to trial. All that is required is that the

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rehearing denied 69 S.Ct. 809, 336 U.S. 947, 93 L.Ed. 1103.

Treasonable conduct may consist of various persons performing separate and distinct acts, and it has been said that it is unnecessary that all those accused participate in the same overt. *U.S. v. Haupt*, D.C.Ill., 47 F.Supp. 832, opinion supplemented 47 F.Supp. 836, reversed on other grounds, C.C.A., 136 F.2d 661.

testimony of two witnesses be given to the Court in the form of affidavits, and the indictments, which have to be presented to the Appellees three days before the trial.[10] In some cases the names are withheld. The Appellants have openly testified to these crimes through affidavits to this Court, and the Court has refused to move forward with this trial in violation of the due process of the law clause, and the treason statutes.

27. That not only has Judge Colleen Kollar-Kotelly attempted to conceal the crime of treason by obstructing the disclosure of the knowledge of these crimes, she has by the force of her judicial authority prevented, hindered, and delayed the laws of the United States as enacted by Congress from being executed, and that by performing these acts she has joined these Appellants in 'Susan Wu' and 'American Express' in seditious conspiracy pursuant to Title 18 U.S.C.A. § 2384 (Seditious conspiracy).

28. **That Judge Colleen Kollar-Kotelly has elected to prevent, hinder and delay the execution of the enactments of Congress pursuant to Title 28 U.S.C.A. § 144, § 372 and § 455, and this is a form of seditious conspiracy because she has joined the**

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10 The general rules as to the trial of criminal prosecutions govern in trials for treason. Thus, under the United States Statute any person who is indicted for treason is entitled to have a copy of the indictment and a list of the jurors and witnesses furnished him at least three entire days before the trial. *U.S v. Pennsylvania Insurgents*, C.C.Pa., 26 F.Cas.No. 15, 443, 2 Dall. 335, 1 L.Ed. 404.

Appellees by using her force of judicial authority to refuse to execute the enactment of said statutes.[11]

29. That Judge Colleen Kollar-Kotelly has known the purposes of the political affiliations of the Appellees in 'Susan Wu' since these intentions were alleged, asserted, and defined in the Appellants' original Complaint filed on February 9, 2000, and these purposes are adverse to the aims and structure of the American constitutional form of Government. After having knowledge of these acts, Judge Kollar-Kotelly has still organized and helped these Appellees to continue to commit these acts of giving Aid and Comfort to the government of the Peoples' Republic of China to which Appellees in

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[11] Has this appeal been taken and prosecuted within the time limited by the acts of Congress? The District Court appears to have acted, in relation to the appeal, as it did in its previous proceedings, under the erroneous impression that it must follow the practice of the Louisiana State courts; without adverting to the acts of Congress which conferred on the court that special jurisdiction it was exercising, and which prescribe the manner in which it shall be exercised. There was no necessity for the petition to the district judge to grant the appeal. It was a matter of right given by law after final decree, which the court could not refuse. Nor had it any power to prescribe the time or manner in which the record was to be transmitted, and the case brought before this court. That, too, is regulated by acts of Congress, which the court can neither change nor modify. All the orders, therefore, upon this subject were unauthorized and void. And the validity of the appeal depends altogether upon the laws of the United States, with our reference to the laws of Louisiana or orders of the District Court. *United States v. Curry, et al*, 47 U.S. How. 6, (1848).

'Susan Wu' still owe their allegiance; and by committing these acts of misprision of treason and seditious conspiracy she has advocated the overthrow of a constitutional form of government in violation of Title 18 U.S.C.A. § 2385 (Advocating overthrow of Government), Title 5 U.S.C.A. § 7311 (Loyalty and striking), and Title 18 U.S.C.A. § 1918 (Disloyalty and asserting the right to strike against the government).

30. That this show cause order has forced the Appellants to submit this case to the scrutiny of the House Committee on the Judiciary and the Senate Committee on the Judiciary for the violation of these laws by Judge Colleen Kollar-Kotelly and the Appellees in both cases.

THEREFORE, since the crime of treason is the only crime defined in the Constitution itself, and since it is explicitly included under Section 3 of Article III, any acts of treason by a judge cannot be considered *good Behavior.* A *Continuance in Office* cannot be maintained by this judge because of the inclusion of the crime of treason in Article III, and the Compensation for her Services as stated in Section 1 cannot only be diminished, it can be totally eliminated for this crime against the Constitution and the United States; and

That the personal jurisdiction of this appeal is that Judge Colleen Kollar-Kotelly, a resident of the District of Columbia, has committed these crimes of misprision of treason and seditious conspiracy against the United States in violation

of Section 1 and 3 of Article III of the Constitution of the United States and she is personally responsible for these actions.

SPECIAL JURISDICTION

31. That the United States District Court of the District of Columbia, and the Court of Appeals for the District of Columbia are clothed in a special jurisdiction[12] for the trial of any crime committed against the United States.[13]

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[12] BY THE COURT. The mere circumstance of delay, in trials of so much expectation and importance, though entitled to some consideration, would not be sufficient of itself to prevent a compliance with the present application. And, we think, that the twelfth section of the Judicial act ought to be so construed, as to vest in the judges a power of holding a special court, in the proper county, if in other respects they do not deem it greatly inconvenient. The act of congress, passed the 2d of March, 1793 (12 Swift's Laws, p. 226, § 3 [1 Stat. 333]), empowers the judges to "direct a special session of the circuit court to be holden for the trial of criminal cases, at any convenient place within the district, nearer to the place where the offences may be said to be committed, than the place, or places, appointed by law for the ordinary sessions;" but this provision does not expressly discriminate between cases of a capital, and of an inferior, nature; and a provision having been previously made for capital cases, it would be justifiable to inferior cases. At all events, any criticism upon the word "nearer" (considering the whole state as a district, or county, in relation to the United States) would not prevent our appointing a special court in the proper county, if such an appointment was, otherwise, eligible. The truth is, that the act gives to the court a legal discretion upon the subject. *U.S. v. INSURGENTS,* 26 F.Cas.No. 15,442, at page 499.

[13] Mr. Chief Justice Marshall, in delivering the opinion of the supreme court of the United States in Cohen's Case, 6

32. That cases of treason against the United States are not cognizable in the state courts,[14] but are triable only by the United States courts located in the state and district wherein the alleged crime was committed.[15] If a state court, authorized to try and decide such offenses, declares an act to be treason, which by the laws constituting the court is not such, it is error and its judgment may be reversed by a superior tribunal; [16] but it does not constitute a usurpation of jurisdiction to give the federal courts power to correct the error.[17]

The words in the fifth section of the judiciary act of 1789, are, "And the circuit courts shall have power to hold special ses-

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Wheat [19 U. S.] 379, says "a case in law or equity consists of the right of the one party as well as of the other, and may truly be said to arise under the constitution or a law of the United States, whenever its correct decision depends on the construction of either." All cases arising in the District of Columbia are cases arising under the constitution and laws of the United States; for there are no other laws in force in the district than the laws of the United States; no other sovereignty to be offended than that of the United States. All crimes and offences committed in that district are offences against the United States, and every prosecution therefor is a controversy to which the United States is a party. *U.S. v. WILLIAMS*, 28 F.Cas.No. 16,712, at page 655, [4 Cranch C.C. 372.] Circuit Court, District of Columbia. (1833), at page 656.

[14] *People v. Lynch*, 11 Johns. (N.Y.) 549; *Ex P. Quarrier*, 2 W.Va. 569.

[15] Constitutional Amendment VI.

[16] *Kemp v. Kennedy*, 14 F.Cas.No. 7,686, Pet.C.C. 30 [aff. 5 Cranch 173, 3 L.Ed. 70].

[17] *Kemp v. Kennedy*, supra.

sions for the trial of criminal causes, at any other time, at their discretion." [18]

33. That said jurisdiction for this Court in the District of Columbia is the seat of the Federal Government of the United States for no Court would exist in the District if the February 27, 1801 Organic Act [19] had not set up this jurisdiction completely separate from that of all of the states. The departments, agencies, and

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[18] *U.S. v. WILLIAMS*, supra, at page 658.

[19] We have thus examined what we understand to be the argument to support the position, that the powers given to this court by the third section of the act of congress of the 27th of February, 1801 (2 Stat 103), can only be exercised in that class of cases which is within the jurisdiction of a circuit court of the United States, sitting in one of the states; and are satisfied that the foundations of that argument are not sustainable. We are satisfied that congress, in exercising its exclusive power of legislation over this District does not act in the character of a mere local legislature, and is not restrained by any rule state legislation, or municipal legislation, from giving full effect to that power, by all the means which are within its general powers of legislation on the other matters submitted by the constitution to its jurisdiction. We are satisfied that all the powers of this court are equally applicable to all cases within its jurisdiction; that all cases within its jurisdiction, are cases arising under the constitution and laws of the United States. And all criminal prosecutions for offences committed in this District, are controversies to which the United States is a party; and, therefore, are strictly of federal cognizance. We are, therefore satisfied that the power of this court to hold special sessions for the trial of criminal causes, is equally applicable to all criminal causes arising in the District, whether they consist of offences against laws of the United States applicable to the whole territory of the United States, or against laws applicable only to the District of Columbia. *U.S. v. WILLIAMS*, supra, at page 658.

officers of the United States are protected by the national power of a national court against crimes. The crimes cited in the original Complaint in 'Susan Wu' are all of Federal law jurisdiction, and those overt acts were completed in the District of Columbia thus giving jurisdiction to this Court which was set up to receive such complaints.

34. That the agencies and departments of the Federal Government are entities which originate in the District of Columbia. Even if one of those agencies or departments has branches outside of the District of Columbia, the original jurisdiction of the executive, legislative, or judicial branch is, by the Constitution, rightfully only in Washington, D.C. The injured party in this case is the Government of the United States due to the treason through RICO activities perpetrated upon it by these Appellees; and that injured party determines that the jurisdiction is in the District of Columbia, and nowhere else, where crimes against it were completed.

> . . . Here it is all federal power and federal jurisdiction. In the states there is federal jurisdiction and state jurisdiction, and it is necessary to keep up the distinction, and draw the line between them. But here there is no danger of collision. Here are no conflicting state rights. Here is no government but that of the United States; no executive but that of the United States; no legislature but that of the United States; and no judiciary but that of the United States. All the powers, authority, and jurisdiction exercised

here, are as much, and as purely federal, as mandated through the original Judiciary Act of 1789 and was defined and elaborated upon in the Organic Act of February 27, 1801. Said jurisdiction was used and can still be used in crimes against the powers, authority, and jurisdiction exercised by The United States, within the respective states. This District is wholly federal. It is the creature of the constitution of the United States. It is the seat of the government of the United States. The reasons for providing such a district are to be found in the history of the congress of the confederation, who found, by experience, that they could not rely upon a state government for protection from insult, and who felt themselves degraded by being obliged to sue for protection to the state authorities. The framers of the constitution, therefore, provided for a national district, to be under the sole and exclusive legislation of congress, where every member might feel that he was standing upon his own ground; where the officers of the national government might be protected by the national power; where every citizen of the United States who may have business to transact with the national government or its officers, may be sure of protection, and where all the citizens of the United States may meet upon a common ground, and feel that they have equal rights. The constitution of the United States gave to congress the exclusive legislation; and the states of Virginia and Maryland ceded the territory. No portion of the state sovereignty

or jurisdiction remained in or over the ceded district. The only sovereignty in the District is that of the United States.[20]

THEREFORE, this case is of the proper special jurisdiction:

a. Because it has been combined with another RICO case in this same Court which has merit and standing;

b. Because these cases contain multiple allegations and assertions of crimes of treason and RICO committed against the United States pursuant to Article III, Section 3, of the Constitution of the United States which mandates this Court for special jurisdiction;[21] and,

c. Because this case has been filed under Title 18 U.S.C.A. § 1964(c), and § 1965 (b)[22] which allows RICO complaints to be filed in any United States District Court where a defendant resides, is found, has an agent, or transacts his

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20 *U.S. v. WILLIAMS*, supra at page 655.

21 Title 18 U.S.C.A. § 2381, (Treason); § 2382, (Misprision of treason); § 2384, (Seditious conspiracy); § 2385, (advocating overthrow of the government); and § 2386 (A)(5), (Registration of certain organizations).

22 Nationwide personal jurisdiction is authorized over all defendants where one defendant is found pursuant to Title 18 U.S.C. § 1965 (b). Individuals, agents of the defendant enterprises and associations in fact are found in the States of Maryland, Pennsylvania, New Jersey, California, Colorado, and other states; and also, the Peoples Republic of China. COMPLAINT UNDER TREASON AND THE RACKETEERING INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO), February 9, 2000.

affairs, and, all these requirements have been met.

CONCLUSION

35. That Appellants are not radicals, but citizens who have, due primarily to their ill health, been victims of various felonious and devious schemes. The revelation of these abuses and the final clearing of the air about these felonious complaints against the Appellants is the objective and it is valued at a "price far above rubies."

36. That Appellants are not "after" Judge Colleen Kollar-Kotelly, and are not trying to embarrass the Court privately or publicly. If the Appellants withdraw their allegations they will lose both cases due to the Judge's predisposed biased and prejudiced decision due to the denial of a fair and impartial trial by jury. At this point, she cannot help but be opinioned against the Appellants.

37. That new complaints may be filed that are separate from this case against the 'American Express' Appellees for the crimes of treason as so stated in this answer to the Court's show cause order, and these complaints may be filed pursuant to the precedents concerning treason.[23] All the Appellants ever desired was one

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[23] Please note that there were eleven separate trials in the *U.S. v. Burr*, 25 F.Cas.No. 14,692 a through g; 14,693 and 14,693a; and 14694 and 14,694a. *The Case of Fries*, 9 F.Cas.No. 5,126 and 5,127 with other related cases.

jury trial before a fair and just court, but it has escalated beyond that original objective.

38. That even though this case was filed as a civil case, it is inevitable that this case will end up under criminal jurisdiction because the statutes cited are under Title 18 U.S.C.A. and that is why the Appellants have forwarded the papers filed in this case to the Department of Justice including the initial Complaint. But even though the statutes cited are criminal, the overt acts are treason and it is the duty of the Appellants to disclose this knowledge to the Court by citing these statutes, and it is the obligation of the Court to honor these allegations with the solemnity and attention that they deserve.

39. That the Appellees in 'Susan Wu' filed false reports with the police when they discovered that their treasonable actions were about to be revealed, and that they would have to explain why the money that they claimed was owed to them by the Appellants was used to pay the Appellees' company debts and other nefarious acts. Copies of these checks and transfers are part of the exhibits attached to the Complaint, and the rest will be presented at trial.

40. That in this convoluted scheme to defraud and commit treason, Appellees have dragged others into their web to do their dirty work. Appellees have used this Court, police officers, Internal Revenue Service agents, a Navy Seal, and others to maneuver and supply information for them while one of the Appellees

was in and out of prison for bribery of Federal officers, and other fraudulent schemes in another U.S. District Court. Appellees in 'Susan Wu' have continued to try and bribe government officials in this country as was their custom in China, and that money is traceable since their pattern is established.

41. That the civil rights violations are SUA (specified unlawful activities) under the RICO statutes pursuant to Title 18 U.S.C.A. § 1956 (c)(7)(F): **"Any act or activity constituting an offense involving a Federal health care offense."** The Civil Rights Act of 1964 is enacted under Title 42 U.S.C.A. § 1981-§ 1988 which is entitled the 'Public Health and Welfare' section of the Code, and there was a reason that Congress intended that to be included in the RICO laws.

42. That all of these cunning schemes are evident of multiple patterns of racketeering activities that would stand the test of jurisdiction for this Court without the treason charges; but the treason is the reason for their RICO activities.

PRAYER FOR RELIEF

WHEREFORE, Appellants pray that:

1. This Honorable Court of Appeals grant this appeal because of the subject, personal, and special jurisdictions so stated in this answer to the Court's show cause order of January 22, 2001, are proper and substantial;

2. This case should be ordered by this Honorable Court to be sent back to the Court below for a jury trial with a new judge presiding so that these new coconspirators can be added; all elements of the conspiracy can be brought to the Court; and the Appellants can vacate these allegations against Judge Colleen Kollar-Kotelly so she can withdraw with the dignity she deserves;

3. This Court grant the appeal for a review of Local Rule 40.5 which Appellants claim is unconstitutional due to the denial of the due process of the law clause in Amendment V and XIV of the Constitution of the United States, and the equal protection of the law clause of Amendment V of the Constitution of the United States; and

4. This Honorable Court of Appeals forward a copy of this motion to the Honorable John Ashcroft, Attorney General of the United States, for his review of Local Rule 40.5 as a Constitutional question pursuant to Rule 44 (Case Involving a Constitutional Question When the United States Is Not a Party) of the Rules of Appellate Procedure, and Title 28 U.S.C.A. § 2403 (Intervention by United States or a State; constitutional question).

Dated this 20th day of February, 2001.

Respectfully submitted,

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CHARGE TO THE GRAND JURY – TREASON.
[2 Wal. Jr. 134; 4 Am. Law J. (N.S.) 83; 5 Pa. Law J.R. 55; 9 West. Law J. 163.] Circuit Court, E.D. Pennsylvania. Sept. 29, 1851. Case No. 18,276.

[1. The expressions "levying war" and "adhering to their enemies, giving them aid and comfort," in the constitutional definition of treason, were borrowed from the ancient law of England, and are to be understood in the sense which they bore in England when the constitution was adopted.]

[2. The expression "levying war" embraces not merely the act of formal or declared war, but any combination forcibly to prevent or oppose the execution or enforcement of a provision of the constitution or of a public statute, if accompanied or followed by an act of forcible opposition in pursuance of such combination.]

This in substance has been the interpretation given to these words by the English judges, and it has been uniformly and fully recognised and adopted in the courts of the United States. See Foster, Hale, and Hawkins, and the opinions of Iredell, Paterson, Chase, Marshall, and Washington, JJ., of the supreme court, and of Paterson, C.J., in U.S. v. Mitchell [Case No. 15,788]; U.S. v. Fries [Id. 15,170]; U.S. v. Bollman [4 Cranch (8 U.S.) 75], and U.S. v. Burr [Id. 14,692a].

[3. Direct proof of the combining may be found in declared purposes of the individual party before the actual outbreak, or it may be derived from proceedings of meetings in which he took part openly, or which he either prompted or made

effective by his countenance or sanction, commending, counseling, or instigating forcible resistance to the law.]

The combination must be directed against the law itself. but such a direct proof of tnis element of the offence is not legally necessary to establish its existence. The concert of purpose may be deduced from the concerted action itself, or it may be inferred from facts concurring at the time, or afterwards, as well as before. [Case No. 15,788]; *U.S. v. Fries* [Id. 15,170]; *U.S. v. Bollman*, [4 Cranch (8 U.S.) 75], and *U.S. v. Burr*, [Id. 14,692a].

[4. Direct proof of the purpose, however, is not legally necessary; the concert of purpose may be deduced from the concerted action itself, or it may be inferred from facts occurring at the time, or before or afterwards.]

[5. To complete the crime of treason, there must be some act of violence as the result or consequence of the combining. But it is not necessary to prove that the person accused was a direct personal actor in the violence. If he was present, directing, aiding, abetting, counselling, or countenancing it, or if, though absent at the time of its actual perpetration, he yet directed the act, or devised or knowingly furnished the means for carrying it into effect, and instigated others thereto, he is guilty of the crime. Successfully to instigate treason is to commit it.] pg. 1047

But here again, it is not necessary to prove that the individual accused, was a direct, personal actor in the violence. If he was present, directing, aiding, abetting, counselling, or countenancing it, he is in law guilty of the

forcible act. Nor is even his personal presence indispensable. Though he be absent at the time of its actual time of its actual perpetration, yet if he directed the act, devised or knowingly furnished the means, for carrying it into effect, instigating others to perform it, he shares their guilt. In treason there are no accessories. There has been, I fear, an erroneous impression on this subject among a portion of our people. If it has been thought safe, to counsel and instigate others to acts of forcible oppugnation to the provisions of a statute, - to inflame the minds of the ignorant, by appeals to passion, and denunciations of the law as oppressive, unjust, revolting to the conscience, and not binding on the actions of men,- to represent the constitution of the land as a compact of iniquity, which it were meritorious to violate or subvert,- the mistake has been a grievous one; and they who have fallen into it may rejoice, if their appeals and their counsels have been hitherto without effect. The supremacy of the constitution, in all its provisions, is at the very basis of our existence as a nation. He, whose conscience, or whose theories of political or individual right forbid him to support and maintain it in its integrity, may relieve himself from the duties of citizenship, by divesting himself of its rights. But while he remains within our borders, he is to remember, that successfully to instigate treason is to commit it.

[6. The constitutional provision that "no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court" (article 3, §3), applies, it seems, only to the proofs on the trial,

and not to a preliminary hearing before a committing magistrate, or the proceedings before a grand jury.]

[7. Treason against the United States may be committed by any one residing or sojourning within its territory and under the protection of its laws, whether he be a citizen or an alien.] 1 Hale P.C. 59, 60, 62; 1 Hawk. P.C. c. 2, § 5; W. Kel. 38. Pg. 1048.

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Under the act of 1790, defining and punishing treason, it has been held by the courts, that to conspire to overthrow the government, or to do any hostile act against it, did not invoke the crime of treason, unless there was an attempt to consummate the treasonable act. Hence the necessity of the late statute, to meet the case of a treasonable conspiracy. And it is perhaps to be regretted that this provision had not been a part of the act of 1790. With such a provision of law, properly enforced, there is reason to believe many persons who have been prominent in our national affairs, and once high in the confidence of the people, would have been the subjects of its penalties; and thus the great rebellion now in progress may have been prevented. _***CHARGE TO GRAND JURY-TREASON,*** Case No. 18,272, pg. 1038. [1 Bond, 609.] Circuit Court, S.D. Ohio. Oct., 1861.

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A United States citizen who is against the United States is not "adhering" to the United

States, since adherence to the United States consists in giving to the United States the loyalty due it from a citizen. *U. S. v. Stephan*, D.C. Mich., 50 F.Supp. 738.

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CHARGE TO THE GRAND JURY, [2 Spr. 292.] District Court, D. Massachusetts. March, 1863, 30 Case No. 18,274:

[1. Until the year 1861 there were no provisions in the criminal legislation of the United States to punish measures that had not ripened into an overt act of levying war or actual interference with the administration of the law. All the incipient and preparatory measures, leading to the overthrow of the government, were left without punishment or reprehension.]

[2. After the commencement of the war of the Rebellion congress endeavored to secure the fidelity of officers and employes of the United States by various acts requiring an oath of allegiance from them,- Act Aug. 6, 1861 (12 Stat. 326); Act March 6, 1862 (12 Stat. 354); Act July 2, 1862 (12 Stat. 502); and to punish conspiracies to effect treasonable objects, and other acts of disloyalty, or of opposition or interference with the government, falling short of the crime of treason. – Act July 31, 1861 (12 Stat. 284); Act July 17, 1862 (12 Stat. 593); Act March 3, 1863 (12 Stat. 735).

[8. If war be actually levied at one place, and any person in league with those actually engaged therein send them arms, money,

provisions, or intelligence for the purpose of aiding them, he is guilty of treason, however distant he may be from the place of their assemblage. Following Ex parte Bollman, 4 Cranch U.S.) 126.]

[10. Although congress has heretofore adopted some of the state laws and modes of procedure, especially those which prescribe the qualifications of jurors and the mode of summoning them, there is no necessity for so doing, or for using any part of the state machinery. The national legislature has constitutional power to prescribe the qualifications of jurors and the manner in which they shall be selected; it may make the judicial system of the United States complete for the independent exercise of all its functions.]

[12. Every person owing allegiance to the United States may subject himself to the penalties of treason. Allegiance is of two kinds,- that due from citizens and that due from aliens resident within the United States. Every sojourner who enjoys our protection is bound to good faith towards our government, and though an alien, he may be guilty of treason by co-operation either with rebels or foreign enemies.] *Charge To The Grand Jury*, [2 Spr. 292.] District Court, D. Massachusetts. March, 1863, 30 Case No. 18,274:

[14. The theory, or opinion that the constitution of the United States does not contemplate making war upon a state, is true only in the sense that a state, as a political body, is not to be compelled to execute the laws of the United States; for those laws act directly upon

individuals and are to be enforced by national instrumentalities. But the constitution does contemplate and provide for the contingency of adverse state interposition or legislation to annul or defeat the execution of national laws: for it expressly declares that the national law shall be supreme, "anything to the constitution or the laws of any state to the contrary notwithstanding."] pg. 1042.

By a statute passed in the year 1799, c. 1, it was enacted: "If any person, being a citizen of the United States, whether he be actually resident, or abiding within the United States, or in any foreign country, shall, without the permission or authority of the government to the United States, directly or indirectly, commence, or carry on, any verbal or written correspondence or intercourse with any foreign government, or any officer or agent thereof, an intent to influence the measures or conduct of any foreign government, or of any officer or agent thereof, in relation to any disputes or controversies with the United States, **or defeat the measures of the government of the United States**; or if any person, being a citizen of, or resident within the United States, and not duly authorized, shall counsel, advise, aid to assist in any such correspondence, with intent, as aforesaid, he or they shall be deemed guilty of a high misdemeanor," and punished by fine and imprisonment. 1 Stat. 613. pg. 1046.

The sixth article of the Constitution declares, in express terms, that "this constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or

which shall be made, under the authority of the United States, shall be the supreme law of the land." pg. 1043.

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CHARGE TO THE GRAND JURY – TREASON, [1 Story, 614.] Circuit Court, D.Rhode Island, June 15, 1842, Case No. 18,275:

[1. To constitute treason against the United States by levying war, there must be a levying of war against the United States in their sovereign character, and not merely a levying of war exclusively against the sovereignty of a particular state.]

[4. It is not necessary to a treasonable design that there should be a direct and positive intention entirely to subvert or overthrow the government. It is sufficient if there is an intention by force to prevent the execution of any one or more of the general and public laws of the government, or to resist the exercise of any legitimate authority of the government in its sovereign capacity.]

The last session of congress made two important additions to our Criminal Code. The statute of the 31st July last (Acts 1861, c. 33; 12 Stat. 284), declares: "That if two or more persons within any state or territory of the United States shall conspire together to overthrow, or to put down, or to destroy by force, the government of the United States, or to levy war against the United States, or to oppose by force the authority of the government of the United States ; or by

force to prevent, hinder, or delay the execution of any law of the United States; or by force, to seize, take, or possess any property of the United States against the will or contrary to the authority of the United States; or by force, or intimidation, or threat to prevent any person from accepting or holding any office, or trusts, or place of confidence, under the United States; each and every person so offending shall be guilty of a high crime, and upon conviction thereof * * * shall be punished by a fine not less than five hundred dollars, or by imprisonment, with, or without hard labor, as the court shall determine, for a period not less than six months nor greater than six years, or by both such fine and imprisonment." Levying war against the United States, and resisting to obstructing the execution of the laws of the United States, have, from the origin of the government, been criminal offences; but heretofore the criminal law has waited until treason or resistance has been consummated by an overt act. Conventions, associations, combinations, or conspiracies, however atrocious even for the purpose of levying war and subverting the government, were not subject to criminal prosecutions; but now we have a statute of prevention which reaches one of the initiatory steps. Not only combinations to overthrow the government, but conspiracies of mutual agreements, whether by few or many, public or private, forcibly to resist or even to delay the execution of any law, are high crimes, subject to severe punishment.

The statute of the 6th August last (Acts 1861, c. 64; 12 Stat. 326) prescribes a new oath

of allegiance, and fidelity to be taken by every officer, clerk, or employe in the several departments, or in any way connected therewith. It is in the following form: "I so solemnly swear (or affirm, as the case may be) that I will support, protect, and defend the constitution and government of the United States against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any state convention or legislature to the contrary not withstanding; and further, that I will well and faithfully perform all the duties which may be required of me by law. So help me God." The violation of this oath is denounced and punished as willful and corrupt perjury. What shall be deemed a violation, is not defined, but the very general and comprehensive language is left to judicial interpretation. This oath is wisely framed for the purpose of upholding the paramount authority of the national government, and recognizes allegiance to the United States as the highest political duty. It emphatically repels the deadly heresy of a paramount state allegiance.

Official oaths have heretofore generally been left without penal sanctions, their observance being secured only by the conscience of the officer; but we are admonished by the recent atrocious examples, that the moral sense is no adequate security against the most appalling perfidy in officers of every grade, and it is wise therefore to affix to such crimes the palpable temporal penalties of perjury. pg. 1051.

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U.S. v. Burr, 14,693, pg. 181, for history of treason including Greenleaf, See pg. 184-col.2. Professor Tucker. . .
If, therefore, it is a general rule of law applicable to other crimes, that whoever is implicated as a principal is liable to prosecution in the state or district where the crime is consummated, there can be no good reason for making an exception to the general rule in the case of treason, on the ground that it will work a peculiar hardship to the accused. Pg.184.

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U.S. v. Burr, 14,694. [Coomb's Trial of Aaron Burr. 368; 2 Robertson's Report for the Trial of Aaron Burr, 481; 3 Carpenter's Report of Burr's Trial, 93.] Circuit Court, D. Virginia. Sept. 3, 1807.

[2. The laws of the several states cannot be regarded as rules of decision, (Judiciary Act, § 34, 1 Stat. 92) in trials for offenses against the United States.] [Cited in Clark v, Sohier, Case No. 2,835; U. S. v. New Bedford Bridge, Id. 15,867.]

[3. The circuit court of the United States, under section 4 of the judiciary act, has power to devise the process for bringing any person before it who has committed an offense of which it has cognizance, without reference to the process given by the state law.] [Cited in Re Sheazle, Case No. 12,734.]

[4. A capias is the proper process to bring an accused in to answer to an indictment for an offense against the laws of the United States.]

[6. It is sufficient, in an affidavit, for the production of a paper in the possession of the prosecution, to aver that it "may be material" in the defense.]

[11. Any legal testimony which shows the expedition in question to be military, or to have been designed against the dominions of the nation, as charged, is admissible.]pg. 187.

The 14th section of the judicial act empowers the courts of the United States "to issue all writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law." This section seem to me to give this court power to devise the process for bringing any person before it who has committed an offence of which it has cognisance, and not to refer it to the state law for that process. The limitation on this power is, that the process shall be agreeable to the principles and usages of law. By which I understand those general principles and those general usages which are to be found not in the legislative acts of any particular state, but in that generally recognised and long established law, which forms the substratum of the laws of every state. pg. 188.

This subject has always appeared to me to be in a great measure governed by the 33d section of the judicial act. That section provides, that for any crime or offence against the United States, the offender may , agreeably to the usual mode of process against offenders in that state where he is found, be arrested and imprisoned or bailed as the case may be. This act contemplates an arrest, not a summons; and this arrest is to

be, not solely for offences for which the state laws authorize an arrest, but "for any crime or offence against the United States." I do not understand the reference to the state law respecting the mode of process as overruling the preceding general words, and limiting the power of arrest to cases in which according to the state laws a person might be arrested, but simply as prescribing the mode to be pursued. Whenever, by the laws of the United States, an offender is to be arrested, the process of arrest employed in the state shall be pursued; but an arrest is positively enjoined for any offence against the United States. This construction is confirmed by the succeeding words: the offender shall be imprisoned or bailed as the case may be. There exists no power to direct the offender, or to bind him without bail, to appear before the court; which would certainly have been allowed had the act contemplated a proceeding in such a case which should leave the person at large without security. But he is absolutely to be imprisoned or bailed as the case may be.

[In a subsequent part of the same section it is enacted "that upon all arrests in criminal cases bail shall be admitted, except where the punishment may be by death." There is no provision for leaving the person at large without bail; and I have ever construed this section to impose it as a duty on the magistrate who proceeds against any offender against the United States to commit or bail him. I perceive in the law no other course to be pursued. This section, it is true, does not respect the process upon an indictment. But the law would be inconsistent

with itself if it required a magistrate to arrest for any offence against the United States, if it commanded him on every arrest to commit or to bail, and yet refused a capias and permitted the same offender to go at large, as soon as an indictment was found against him. This section therefore appears to me to be entitled to great influence in determining the court on the mode of exercising the power given by the 14th section in relation to process. On the impeachment which has been mentioned, this point was particularly committed to Mr. Lee, and the law upon it was fully demonstrated by him. The only difficulty I ever felt on this question was produced by the former decision of Judge Iredell. If the state practice on this subject had been adopted I should have held myself bound by that adoption. But I do not consider the state practice as adopted.* * * pg. 189.

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Sterling v. Constantine, 287 U.S. 397, "If this extreme position could be deemed to be well taken, it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal Constitution upon the exercise of state power would be but impotent phrases, the futility of which the State may at any time disclose by the simple process of transferring powers of legislation to the Governor to be exercised by him, beyond control, upon his assertion of necessity. Upon our system of government, such a conclusion is obviously

untenable. There is no such avenue of escape from the paramount authority of the Federal Constitution. When there is a substantial showing that the exertion of state power has overridden private rights secured by that Constitution, they subject one for judicial inquiry in an appropriate proceeding directed against the individuals charged with transgression." At 397-398.

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CHARGE TO GRAND JURY-TREASON, Case No. 18,272. [1 Bond, 609.] Circuit Court, S.D. Ohio. Oct., 1861:

It has been already noticed, that to justify a conviction for treason, unless the crime is confessed in open court, there must be the evidence of two witnesses to any overt act. The plain meaning of the words "overt act," as used in the constitution and the statute, is an act of a character susceptible of clear proof, and not resting in mere inference, or conjecture.

The highest degree of constitutional protection is due to the individual acting without conspiracy. But even an individual cannot claim that the Constitution protects him in advocating or teaching overthrow of government by force or violence. I should suppose no one would doubt that Congress has power to make such attempted overthrow a crime. But the contention is that one has the constitutional right to work up a public desire and will to do what is a crime to attempt. I think direct incitement by speech or writing can

be made a crime, and I think there can be a conviction without also providing that the odds favored its success by 99 to 1, or some other extremely high ratio. *Frankfeld v. United States,* 198 F.2d 679.

There is no constitutional right to 'gang up' on the government. *Ibid.*

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By St. 1835, c. 99, § 2[4 Stat.. 488], it is enacted that, if any person shall corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer, in any court of the United States, in the discharge of his duty, or shall corruptly, or by threats or force, obstruct or impede, the due administration of justice therein, every person so offending shall be liable to prosecution therefor by indictment. **30 Fed. Case No. 18,273. CHARGE TO THE GRAND JURY-TREASON.**

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***Charge to the Grand Jury, Neutrality Laws And Treason,* 30 Fed.Case No. 18,269.**

On the 5th of June, 1794 (1 Stat. 381), an act was passed, one section of which was similar to the law whose substance I have already stated to you. And since that time, by legislation, as well as by the official action of the executive, this duty and policy of our country have been recognized and declared in the clearest terms, and under a

great variety of circumstances. The principles on which these laws rest are,... and that, for its own peace and welfare, and from its own sense of what is due to others, it cannot suffer individuals, by mingling themselves in the belligerent operations of other nations, or making war on their own authority, to run the hazard of counteracting policy, or embroiling the relations of their government.

It may be added, that the United States was the first of all civilized nations to embody these principles in their municipal law, and enforce them by penal enactments. Having so legislated, it has been become the clear duty of the courts of the United States to take cognizance of these offences, and it is to be expected that they will discharge with fidelity and firmness a duty so important to their country and to the peace of the world.

The presence of numbers two manifest an intent to use force, if found requisite to obtain their demands, may compel submission to that force, which is present and ready to inflict injury, and which may thus be effectually used to oppose the execution of the law.

I hardly need inform you that it is not material what kind of law of the United States is thus resisted. We can know no distinction between the one law of the United States and another. If it were up to you, or to me, to be influenced by our own wishes, in determining what laws should be executed, and what might resist impunity, we should live no longer under a government of laws, but under a government of men; the transitory feelings of men, being

substituted for a known and stable rule of action, operating at all times, and operating equally on all; and the citizen would be held innocent or guilty, not according to the caprice of his judges. This is not the nature of the government under which we live. No such government could long exist in this country, or ought to exist in any country. 30 Case No. 18,269.

August, 1861 (Acts 1861, c. 64; 12 Stat. 326) requires that every officer, clerk, or employ'e in the several departments of the government, or in any way connected therewith, shall take an oath to support and defend the constitution and government of the United States against all enemies, whether domestic or foreign, and to bear true faith, allegiance and loyalty to the same, any ordinance, resolution, or law of any state convention or legislature to the contrary notwithstanding. Here, you will observe, is a most important and striking provision, unknown to any previous official oath. It requires not only fidelity to the government, but the support and defence thereof against all enemies, domestic as well as foreign. Nor is this all; there is added this emphatic language: "Any ordinance, resolution, or law of any state convention or legislature to the contrary notwithstanding.";

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***Case of Fries*, 9 Fed. Case 5,127:**

Mr. Rawle then proceeded, under the direction of the court, to state the law. The treason whereof the prisoner was charged was, "levying war against the United States." Const. U.

S. art. 3, § 3. What he asked was levying war against the United States? He conceived himself authorized, upon good authority, to say, levying war did not only consist in open, manifest, and avowed rebellion against the government, with a design of overthrowing the constitution; but it may consist in assembling together in numbers, and by actual force, or by terror, opposing any particular law or laws. Again, there can be no distinction as to the kind or nature of the law, or the particular object for which the law was passed, since all are alike the acts of the legislature, who are sent by the people at large to express their will. Force need not be used to manifest this spirit of rebellion, nor is it necessary that the attempts should have been successful to constitute the crime. The endeavour, by intimidation, to do the act, whether it be accomplished or not, accounts to treason, provided the object of those concerned in the transaction, is of a general nature, and not applied to a special or private purpose. In order to effect the object of those embarked in crimes of this high nature, it is well known that various means are necessarily employed; various acts may be perpetrated to accomplish the main end: they may proceed by the execution of some enormous crimes, as burglary, arson, robbery, or murder, either, or all of them; but even if one or all of these crimes were committed, except the purpose should be of a general nature, they may form distinct and heinous offence; but the perpetrators may not be guilty of treason. If a particular friend of the party had been in the custody of the marshal; if even a number

sufficient for the purpose should step forward and rescue such a person, if it was not with a view to rescue prisoners generally, it would amount to no more than a rescue; but if general, it is treason. **The views of the party fix the crime, and therefore only the design is necessary to be known.** at 926. (emphasis added).

Mr. Rawle was then producing an authority, when Judge CHASE said, the court would admit, as a general rule, of quotations which referred to what constituted actual or constructive levying war against the king of Great Britain, in his regal capacity; or, in other words, of levying war against his government, but not against his person, because it was of the same nature as levying war against the United States would be applied here: so was that part called adhering to the king's enemies:-they may, any of them be read to the jury, and the decisions thereupon- not as authorities whereby we are bound, but as the opinions and decisions of men of great legal learning and ability. *Supra*, 5,127, at 927.

Mr. Rawle quoted Hawkins (book 1, c. 17, § 23) as an authority of authenticity to prove, that not only those who rebelled against the king, by taking up arms with the avowed design of dethroning him, but those who withstood his lawful authority, and who endeavoured to oppose his government; who withstood the king's forces, or attacked any of his fortresses- those, in fine, whose avowed object was of a public and general, and not of a private and personal nature, were guilty of high treason. He also read Sir John

Friend's Case from Holt, 681, and Dammaree and Purchases' Case, 15 State Tr. 589.

. . . He also read Doug. 590, Lord George Gordon's Case, when it was Lord Mansfield's opinion that any attempt, by violence, to force the repeal of a law, or to prevent its execution, is levying war, and treason. He considered, from those few authorities, that he was justifiable in saying that a rising, with intent by force to prevent the execution of a law, as well as laws in general, preventing the marshal executing his warrants, and preventing the other officers charged with the execution of laws in question, amounted to levying war, agreeably to the constitution of the United States. *Case of Fries,* 9 Fed. Cas. 5,127, at 927.

...On this general position the court are of opinion, that any such insurrection or rising to resist, or to prevent by force or violence, the execution of any statute if the United States, for levying or collecting taxes, duties, imposts, or excises; or for calling forth the militia to execute the laws of the Union, or for any other object of a general nature or national concern, under any pretence, as that the statute was unjust, burthensome, oppressive, or unconstitutional, is a levying was against the United States, within the contemplation and construction of the constitution. The reason for this opinion is, that an insurrection to resist or prevent, by force, the execution of any statute of the United States, has a direct tendency to dissolve all the bands of society, to destroy all order and all laws, and also all security for the lives, liberties and property of the citizens of the United States. The court are of

opinion, that military weapons (as guns and swords, mentioned in the indictment) are not necessary to make such insurrection or rising amount to a levying war, because numbers may supply the want of military weapons, and other instruments may effect the intended mischief. The legal guilt of levying war may be incurred without the use of military weapons or military array. . . . The court are of opinion, that a combination or conspiracy to levy war against the United States is not treason, unless combined with an attempt to carry such combination or conspiracy into execution; some actual force or violence must be used, in pursuance of such design to levy war; but that it is altogether immaterial whether the force used is sufficient to effectuate the object- any force connected with the intention will constitute the crime of levying war. *Case of Fries*, 9 Fed. Cas. 5,127, 930-931.

As to the plea of ignorance, the law says ignorance shall excuse no man; otherwise, how could it be possible to prove whether a person knew the law or not? If ignorance could excuse a man of crimes, no crime would be brought to justice, or there must be, what is not to be expected, some self-evident proof of the guilt. 5,126, at 915.

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Code of Ethics for Government Service. House Concurrent Resolution No. 175, July 11, 1958, 72 Stat. B12 provided that:

"Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

"CODE OF ETHICS FOR GOVERNMENT SERVICE"

"Any person in Government service should:

"I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government Department.

"2. Uphold the Constitution, laws, and legal regulations of the United States arid of all governments therein and never be a party to their evasion.

"3. Give a full days labor for a full day's pay: giving to the performance of his duties his earnest effort and best thought.

"4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

"5. Never discriminate unfairly by the dispensing of special favors or privilege to anyone, whether for remuneration or not: and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

"6. Make no private promises of any kind binding upon the duties of office, since a

Government employee has no private word which can be binding on public duty.

"7. Engage in no business with the Government, either directly or indirectly which is inconsistent with the conscientious performance of his governmental duties.

"8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit,

"9. Expose corruption wherever discovered.

"10. Uphold these principles, ever conscious that public office is a public trust." (Emphasis added).

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CONSTITUTIONAL PROVISIONS

Article II, Section 3: ". . . he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States."

Article III, Sections 3: "Treason against the United States, shall consist only in levying War against them, oar in adhering to their Enemies, giving them Aid and Comfort. . . ."

Article IV, Section 1: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Article IV, Section 2: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Article VI, Paragraph 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Amendment V: ". . .nor be deprived of life, liberty, or property, without due process of law;"

Amendment VII: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, . . ."

Amendment XIV, Section 1: ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

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STATUTORY PROVISIONS INVOLVED

Title 18 U.S.C.A. § 4. Misprison of a felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

Title 18 U.S.C.A. § 242. Deprivation of rights under color of law.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to

different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than one year or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Title 18 U.S.C.A. § 371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United State, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years,

or both. (previously, § 37 of the Penal Code, and before that, § 5440, Rev. Stats.)

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Title 18 U.S.C.A. § 793. Gathering, transmitting, or losing defense information

(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place. in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of

the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, wilting, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person. or from any source whatever, any document. writing, code hook, signal book, sketch, photograph, photographic negative, blueprint, plan, map. model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter: or

(d) Whoever, lawfully having possession of, access to. control over, or being entrusted with any document. writing, code hook, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument,

appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to he communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch,

photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its propel~ place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having
knowledge that the same has been illegally removed from its proper place of
custody or delivered to anyone in violation of his trust, or lost, or stolen,
abstracted, or destroyed, and fails to make prompt report of such loss, theft,
abstraction, or destruction to his superior officer—

Shall be fined under this title or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(h)(1) Any person convicted of a violation of this section shall forfeit to the United States, irrespective of any provision of State law, any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, from any foreign government, or any faction or party or military or naval force within a

foreign country, whether recognized or unrecognized by the United States, as the result of such violation. For the purposes of this subsection, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(2)The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3)The provisions of subsections (b), (c), and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (C), and (e)—(p)) shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property;

(C)any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

Title 18 U.S.C.A. § 794. Gathering or delivering defense information to aid foreign government

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life, except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense resulted in the identification by a foreign power (as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978) of an individual acting as an agent of the United States and consequently in the death of that individual, or directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.

(b) Whoever, in time of war, with intent that

the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(d)(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation, and

(B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

For the purposes of this subsection, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c) and through (p) of section 413 of the Comprehensive] Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(p)) shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceed in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title shall be deposited in the Crime Victims Fund Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

Title 18 U.S.C.A. § 798. Disclosure of classified information

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of

the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

Shall be fined under this title or imprisoned not more than ten years, or both.

(b) As used in subsection (a) Of this section—

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or. electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military

force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to 'act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

(d)(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

(B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) The court in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1).

(3) Except as provided in paragraph (4), the provisions of subsections (b), (c), and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(p)), shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund established under section 1402 of tile Victims of Crime Act of 1984 (42 U.S.C. 10601) all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

(5) As used in this subsection, the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Title 18 U.S.C.A. § 1956. Laundering of monetary instruments.

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful
activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not there than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or 'transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in 4he United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on

of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or In part—

(i) to conceal or disguise 'the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described In subparagraph. (B), the' defendant's knowledge may be established by proof 'that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or. actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the. carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to he the proceeds, of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal

law,conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title 'or 'imprisoned for not more than 20 years, or both. For purposes of this paragraph and' paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations, of this section.

(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(1) the value of the 'property, funds, or monetary -instruments involved in the transaction; or

(2) $10,000.

(c) As used in this section—

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "'conducts" includes initiating, concluding, or participating in initiating, or con a

transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transactions" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is

(5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' cheeks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" has the definition given that term in section 5312(a)(2) of title 3I, United States Code, or the regulations promulgated thereunder;

(7) the term "specified unlawful activity" means—

(A) any act or activity constituting an offense

listed in section 1961(1)of this title except an act which is indictable under subchapter II of chapter 3 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, or destruction of property by means of explosives or fire;

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21U.S.C. 848);

(D) an offense under section 32(relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal officia1 by threatening or injuring a family member), section 115 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section' 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 542 (relating to entry of goods by means

of false statements), section 545 relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody); section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to fraudulent Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials); section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section

1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services),,[3] section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass' destruction), section 2332b (relating- to international terrorist acts transcending national boundaries), or section 2839A (relating to providing material support to terrorists) of this' title, section 46502 of title 49, United 'States Code;,[3] a felony violation of the Chemical Diversion' and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled' Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, and felony violation of section 15 of the Food Stamp Act of, 1977 (relating to food stamp fraud) involving a

quantity of coupons having a value of not less than $5,000, or any felony violation of the foreign Corrupt Practices Act; or

(E) a felony, violation of the Federal Water Pollution Control Act (33U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent. Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 3OOf et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et. seq.).

(F) Any act or activity constituting an Offense involving a Federal health care offense.

(8)the term "State" includes a State of the United States, the District of Columbia, and commonwealth, territory, or possession of the United States.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (e)(7)(E) may be investigated by such components of the

Department of Justice as the Attorney General may direct and the National Enforcement Investigations Center, of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part In the United States; and

(2) the transaction or series of related transactions involve funds or monetary instruments of a value exceeding $10,000.

(g) **Notice of conviction of financial institutions**.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any' person who conspires to commit any offense defined in this section1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

Title 18 U.S.C.A. § 1961(1). Definitions.

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is

chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471; 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891—894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection, with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1843 (relating to wire fraud), section 1344 (relating to' financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461—1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport),

section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of ,wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling business), section 1956 (relating to the laundering of monetary instruments), Section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder- for- hire), sections 2251, 2251A, 2252 and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copy right), section 2319A(relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320(relating to trafficking in goods or services bearing counterfeit marks), sections2321 (relating to trafficking in certain motor vehicles or

motor vehicle parts), sections 2341-2346 (relating to trafficking contraband cigarettes), sections 2421-24(relating to white slave traffic), (C) any act which is indictable under title 29,United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations), or section 501 (c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, receiving, ,or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the controlled substance Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278(relating to importation of alien for immoral purpose) if the act is indictable under such section of such Act was committed for the purpose of financial gain;

(2) "State" means any State of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4)"enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;
(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;
(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State, or political subdivision thereof , or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of a value at rate usurious under State or Federal law, where the usurious rate is at least twice enforceable rate;
(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with duty of enforcing or carrying into effect this chapter;
(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court

of the United States, duly entered in any case or proceeding arising under this chapter;
(9) " documentary material" includes any book, paper, document, record, recording or other material; and
(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United states, the Associate Attorney General of the United States, any Assistant General of the United states, or any employee of the Department of Justice, or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

Title 18 U.S.C.A. § 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise,

making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

Title 18 U.S.C.A. §§ 1965. Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpoenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpoena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which suet person resides, is
found, has an agent, or transacts his affairs.

Title 18 U.S.C.A. § 2071. Concealment, removal, or mutilation generally.

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the united State, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both. Appendix.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilated, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

Title 18 U.S.C.A. § 2381. Treason

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than $10,000; and shall be incapable of holding any office under the United States.

1 Stat. 112:

Be it enacted, & c., That if any person or

persons, owing allegiance to the United States of America shall levy war against them, or shall adhere to their enemies, giving them aid and comfort within the United States or elsewhere, and shall be thereof convicted, on confession in an open court, or on the testimony of two witnesses to the same overt act of the treason whereof he or they shall be indicted, such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death. *An act for the punishment of certain crimes against the United States, as enacted by Congress, Act April 30, 1790.* [1 Stat. 112.]

Special note: *Capias ad respondendum.* A judicial writ by ("capias") by which actions at law were frequently commenced; and which commands the sheriff to take the defendant, and him safely keep, so that he may have his body before the court on a certain day, to answer the plaintiff in the action. It notifies defendant to defend suit and procures his arrest until security for plaintiff's claim is furnished.

Title 18 U.S.C.A. § 2382. Misprision of treason

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge' of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both.

1 Stat. 112:

SEC. 2 *And be it further enacted,* That if any person or persons, having knowledge of the commission of any of the treasons aforesaid, shall conceal, and not as soon as may be, disclose and make known the same to the President of the United States, or some one of the judges thereof, or to the President or governor of a particular State, or some one of the judges or justices thereof, such person or persons, on conviction, shall be adjudged guilty of misprision of treason, and shall be imprisoned of treason, and shall be imprisoned not exceeding seven years, and fined not exceeding one thousand dollars. *An act for the punishment of certain crimes against the United States, as enacted by Congress, Act April 30, 1790.* [1 Stat. 112.]

Title 18 U.S.C.A. § 2384. Seditious conspiracy.

If two of more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United State contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both. Also, see Act July, 1861 (Acts 1861, c. 128; 12 Stat. 502).

1 Stat. 613:

By a statute passed in the year 1799, c. 1, it was enacted: "If any person, being a citizen of the United States, whether he be actually resident, or abiding within the United States, or in any foreign country, shall, without the permission or authority of the government to the United States, directly or indirectly, commence, or carry on, any verbal or written correspondence or intercourse with any foreign government, or any officer or agent thereof, an intent to influence the measures or conduct of any foreign government, or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or defeat the measures of the government of the United States; or if any person, being a citizen of, or resident within the United States, and not duly authorized, shall counsel, advise, aid to assist in any such correspondence, with intent, as aforesaid, he or they shall be deemed guilty of a high misdemeanor," and punished by fine and imprisonment. *Charge To The Grand Jury,* [2 Spr. 292.] District Court, D. Mass., March, 1863, 30 Case No. 18,274, pg. 1046. (Emphasis added).

Title 18 U.S.C.A. § 2386. Registration of certain organizations

(A) For the purposes of this section:

"Attorney General' means the Attorney General of the United States;

"Organization" means any group, club, league, society, committee, association, political party, or combination of individuals, whether incorporated or otherwise, but such term shall not include any corporation, association, community chest, fund,

or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes;

"Political activity" means any activity the purpose or aim of which, or one of the purposes or aims of which, is the control by force or overthrow of the Government of the United States or a political subdivision thereof, or any State or political subdivision thereof;

An organization is engaged in "civilian military activity" if:

(1) it gives instruction to, or prescribes instruction for, its members in the use of firearms or other weapons or any substitute therefor, or military or naval science; or

(2) it receives from any other organization or from any individual instruction in military or naval science; or

(3) it engages in any military or naval maneuvers or activities; or

(4) it engages, either with or without arms, in drills or parades of. a military or naval character; or

(5) it engages in any other form of organized activity which in the opinion of the Attorney General constitutes preparation for military action;

An organization is "subject to foreign control" if:

(a) it solicits or accepts financial contributions, loans, or support of any kind, directly or indirectly from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or political subdivision thereof, or a political party in a foreign country, or

an international political organization; or

(b) its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, or a political party in a foreign country, or an international political organization.

(B)(1) The following organizations shall be required to register with the Attorney General:

Every organization subject to foreign control which engages in political activity;

Every organization which engages both in civilian military activity and in political activity;

Every organization subject to foreign control which engages in civilian military activity; and

Every organization, the purpose or aim of which, or one of the purposes or aims of which, is the establishment, control, conduct, seizure, or overthrow of a government or subdivision thereof by the use of force, violence, military measures, or threats of any one or more of the foregoing.

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Title 28 U.S.C.A. § 144. Bias and prejudice of judge.

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no

further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reason for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be head, or good cause shall be shown for failure to file it within such time. A party may file may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

Title 28 U.S.C.A. § 372 (c)(1). Retirement for disability; substitute judge on failure to retire; judicial discipline.

Any person alleging that circuit, district, or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct. In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefore, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint.

(2) Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall

promptly transmit such complaint to the chief judge of the circuit, or if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this subsection only, included in the term "chief judge"). The clerk shall simultaneously transmit a copy of the complaint to the judge or magistrate whose conduct is the subject of the complaint.

(3) After expeditiously reviewing a complaint, the chief judge, by written order stating his reasons, may—

(A) dismiss the complaint, if he finds it to be (i) not in conformity with paragraph(1) of this subsection, (ii) directly related to the merits of a decision or procedural ruling, or (iii) frivolous; or

(B) conclude the proceeding if he finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of his written order to the complainant and to the judge or magistrate whose conduct is the subject of the complaint.

(4) If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall promptly—

(A) appoint himself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and

(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under this paragraph.

Title 28 U.S.C.A. § 455. Disqualification of justice, judge, or magistrate.

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

Title 28 U.S.C.A. § 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from the final decisions of the district courts of the United States, the United states District Court for the District of Canal Zone, the District of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States of Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections1292 (c) and (d) and 1295 of this title.

Title 28 U.S.C.A. § 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States,

by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section—

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Title 28 U.S.C.A. § 2403. Intervention by United States or a State constitutional question.

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United

States t intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a-party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

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Title 42 U.S.C.A. § 1985. Conspiracy to interfere with civil rights

Preventing officer from performing duties

(1)If two or more persons in any State or Territory conspire toprevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing Justice; intimidating party; witness, or Juror

(2) If two or more persons in any State or

Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United State from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or

threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

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Federal Rules of Civil Procedure:

Rule 38. Jury Trial of Right.

(a) Right preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefore in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading

directed to such issue, and (2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

(c) Same: Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of a jury trial. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(e) Admiralty and Maritime Claims. These rules shall not be construed to create a right to trial by jury of the issues in an admiralty or maritime claim within the meaning of Rule 9(h).

Rule 60. Relief From Judgment or Order.

(b) Mistakes; Inadvertence Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the. court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time a new trial under Rule 59(b); (3) fraud (heretofore denominated intrinsic or extrinsic),

misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review, and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

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Federal Rules of Appellate Procedure:

Rule 4(a)(B)(i): "If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal

a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered."

Rule 44. Case Involving a Constitutional Question When the United States Is Not a Party.

If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

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United States District Court for the District of Columbia:

Local Rule 40.5

RELATED CASES

(a) DEFINITION.

A related case for the purpose of this Rule means as follows:

(1) Criminal cases are deemed related when (i) a superseding indictment has been filed, or (ii) more than one indictment is filed or pending against the same defendant or defendants, or (iii) prosecution against different defendants arises from a common wiretap, search warrant, or activities which are a part of the same alleged

criminal event or transaction. A case is considered pending until a defendant has been sentenced.

(2) If a civil forfeiture proceeding is filed concerning a criminal defendant, or a defendant is charged in a criminal case while a civil forfeiture proceeding is pending concerning that defendant, the civil and criminal cases are to be deemed related.

(3) Civil, including miscellaneous, cases are deemed related when the earliest is still pending on the merits in the District Court and they (i) relate to common property, or (ii) involve common issues of fact, or (iii) grow out of the same event or transaction or (iv) involve the validity or infringement of the same patent. Notwithstanding the foregoing, a case filed by a pro se litigant with a prior case pending shall be deemed related and assigned to the judge having the earliest case. However, if a judge in the interest of judicial economy, consolidates a significant number of similar pro se prisoner complaints, or has a single case with a significant number of pro se prisoner plaintiffs, and any of those prisoners later files a new complaint which is unrelated to the subject matter of the consolidated cases or the multiple plaintiffs' case, the judge who receives the new case as related may, if he or she chooses, refer the new case to the Calendar Committee for random assignment.

(4) Additionally, cases whether criminal or civil, including miscellaneous, shall be deemed related where a case is dismissed, with prejudice or without, and a second case is filed involving the same parties and relating to the same subject

matter.

(b) NOTIFICATION OF RELATED CASES. The parties shall notify the Clerk of the existence of related cases as follows:

(1) At the time of returning an indictment the United States Attorney shall indicate, on a form to be provided by the Clerk, the name, docket number and relationship of any related case pending in this court or in any other United States District Court. The form shall be mailed to all defense counsel along with the notification of the arraignment. Any objection by the defendant to the related case designation shall be served on the U.S. Attorney and filed with the Clerk within 10 days after arraignment.

(2) At the time of filing any civil, including miscellaneous, action, the plaintiff or his attorney shall indicate, on a form to be provided by the Clerk, the name, docket number and relationship of any related case pending in this court or in any other United States Court. The plaintiff shall serve this form on the defendant with the complaint. Any objection by the defendant to the related case designation shall be filed and served with the defendant's first responsive pleading or motion.

(3) Whenever an attorney for a party in a civil, including miscellaneous, or criminal action becomes aware of the existence of a related case or cases, the attorney shall immediately notify, in writing, the judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties. Upon receiving information from any source concerning a relationship between

pending cases, the Clerk shall transmit that information in writing to the judges on whose calendars the cases appear and to all parties to the proceeding.

(c) ASSIGNMENT OF RELATED CASES.

Related cases noted at or after the time of filing shall be assigned in the following manner:

(1) Where the existence of a related case in this court is noted at the time the indictment is returned or the complaint is filed, the Clerk shall assign the new case to the judge to whom the oldest related case is assigned. If a judge who is assigned a case under this procedure determines that the cases in question are not related, the judge may transfer the new case to the Calendar Committee. If the Calendar Committee finds that good cause exists for the transfer, it shall cause the case to be reassigned at random. If the Calendar Committee finds that good cause for the transfer does not exist, it may return the case to the transferring judge.

(2) Where the existence of related cases in this court is revealed after the cases are assigned, the judge having the later-numbered case may transfer that case to the Calendar Committee for reassignment to the judge having the earlier case. If the Calendar Committee finds that good cause exists for the transfer, it shall assign the case to the judge having the earlier case. If the Calendar Committee finds that good cause for the transfer does not exist, it may return the case to the transferring judge.

(3) Where a party objects to a designation that cases are related pursuant to subparagraphs (b)(1)

or (b)(2) of this rule, the matter shall be determined by the judge to whom the case is assigned. Any party may appeal to the Calendar Committee from the trial judge's decision by filing an appropriate motion with the Clerk within three days after notification of the judge's decision. The Calendar Committee in its discretion may grant a hearing or decide the appeal on the papers. The decision of the Calendar Committee shall be final.

(d) MOTIONS TO CONSOLIDATE.

Motions to consolidate cases assigned to different judges of this court shall be heard and determined by the judge to whom the earlier-numbered case is assigned. If the motion is granted, the later-numbered case shall be reassigned in accordance with section c of this Rule.

(e) REFERRALS TO A SINGLE JUDGE BY THE CALENDAR COMMITTEE.

Upon a finding by the Calendar Committee that two or more cases assigned to different judges should be referred for a specific purpose to one judge in order to avoid a duplication of judicial effort, the Calendar Committee may enter such an order of referral. The order shall be with the consent of the judge to whom the cases will be referred and shall set forth the scope of authority of said judge. Unless otherwise provided, such an order shall not transfer any cases nor affect the assignment of future cases.

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